LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 12

FEDERAL POWER COMMISSION, PETITIONER

vs.

IDAHO POWER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

PETITION FOR CERTIORARI FILED DECEMBER 19, 1951
CERTIORARI GRANTED MARCH 3, 1952

INDEX

	Original	Print
Proceedings in U.S.C.A. for the District of Columbia Circuit		
Petition for review of an Order of the Federal Power Commission	1	1
Opinion, Prettyman, J.	8	6
Judgment	16	14
Motion for clarification of judgment	16a	15
Order amending judgment	16c	16
Order recalling opinion and judgment	16d	17
Amended judgment and decree	16e	18
Certificate of transcript of record before Federal Power Commission	17	20
Portions of record before Federal Power Commission	23	26
Application for license filed August 22, 1947	23	26
Letter dated September 16, 1947 J. H. Gutride to C. A. Robins, Governor of Idaho	29	34
Notice dated September 19, 1947 of application for major license	31	37
Amendments to application for license filed December 3, 1947	32	38
Exhibit J (Amended)—General map of project area	35	42
Exhibit N (Amended)—Estimate of Project Cost	37	43
Letter dated December 22, 1947 J. H. Gutride to Secretary of Interior	38	44
Notice dated December 26, 1947 of amended application for major license	40	48
Exhibit F (Revised)—Statement pertaining to project lands	41	48
Report by letter dated February 19, 1948 of the Secretary of the Interior to Nelson L. Smith	42	49
Order issued March 3, 1948 authorizing issuance of license (Major)	44	51
Letter dated March 18, 1948 Leon M. Fuquay to Director, Bureau of Land Management, Department of the Interior	49	56
Application for supplementary amendments to application filed April 20, 1949	50	58
Exhibit "J-1"—Project No. 1975—Idaho, Bliss H. E. Development, General Map	53	60
Exhibit "J-2"—Project No. 1975—Idaho, Bliss H. E. Development, Transmission Lines	54	61
Exhibit M—General description and specifications of equipment	56	62
Exhibit N—Estimate of project cost	57	63
Letter dated May 2, 1949 Leon M. Fuquay to Idaho Power Company	58	64
Letter dated July 29, 1949, Leon M. Fuquay to the Secretary of the Interior	59	66
Report by letter dated August 10, 1949, Secretary of the Interior to Nelson L. Smith	61	68
Letter dated August 16, 1949, Joseph H. Gutride to Idaho Power Company	66	74
Letter dated August 24, 1949, J. H. Gutride to Director, Bureau of Land Management, Department of the Interior	67	76

Letter dated September 9, 1949, Idaho Power Company to Federal Power Commission	72	82
Letter dated September 28, 1949 Nelson L. Smith, to the Secretary of the Interior	79	92
Report by letter dated October 4, 1949, Secretary of the Interior to Nelson L. Smith	80	94
Letter dated October 5, 1949 Leon M. Fuquay to Idaho Power Company	82	96
Letter dated October 5, 1949, Idaho Power Company to Federal Power Commission	83	96
Order issued October 13, 1949, superseding order authorizing issuance of license (Major)	86	99
Letter dated October 13, 1949, Secretary of the Interior to Nelson L. Smith	97	110
Complaint of the Secretary of Interior filed October 13, 1949	98	111
Petition of Idaho Power Company for rehearing filed November 10, 1949	105	116
Letter dated November 17, 1949, Secretary of the Interior to Nelson L. Smith	109	119
Letter dated November 28, 1949, Claude L. Draper to the Secretary of Interior	111	122
Modification of petition of Idaho Power Company for rehearing	112	124
Order issued December 4, 1949 extending time for action upon petition for rehearing	113	124
Order modifying order of October 13, 1949, authorizing issuance of license (Major)	114	125
Order extending time to file petition for writ of certiorari	117	128
Order allowing certiorari	118	129
Stipulation as to printing of record	119	130

[fol 1] **IN THE UNITED STATES COURT OF APPEALS**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10530

IDAHO POWER COMPANY, *Petitioner,*

v.

FEDERAL POWER COMMISSION, *Respondent.*

Petition for Review of an Order of the Federal Power Commission

Filed February 7, 1950

To the Honorable, the United States Court of Appeals for the District of Columbia Circuit, and to the Judges thereof:

Idaho Power Company (hereinafter sometimes called the "Company"), being aggrieved by the Order of the Federal Power Commission (hereinafter sometimes called the "Commission") entered on October 13, 1949, in the matter of Project No. 1975, copy of [fol. 2] which is filed herewith as Exhibit A, and by its Order of January 18, 1950 (Exhibit B) denying Petitioner's application for rehearing of said matter, as corrected by Errata dated and issued by the commission on January 31, 1950 (Exhibit C), hereby petitions this Court for review of said Orders of the Commission and respectfully shows:

I.

This petition for review is filed under and pursuant to the provisions of Section 313(b) of the Federal Power Act, U.S.C., Title 16, Sec. 825 l; and is also filed under and pursuant to the provisions of Section 10 of the Administrative Procedure Act, U.S.C., Title 5, Sec. 1009.

II.

Petitioner seeks to have the aforesaid Order of the Commission of October 13, 1949 modified so as to delete therefrom the conditions contained in Paragraph (F), subparagraphs 1-10, inclusive.

III.

1. Idaho Power Company is a corporation duly organized and existing under the laws of the State of Maine, and operating as a public utility in the States of Idaho, Oregon and Nevada. The Company is also an electric public utility and a licensee, as those terms are defined in the Federal Power Act.

2. The Federal Power Commission is the administrative body entrusted with the administration of the Federal Power Act, U.S.C., Title 16, Section 791 *et seq*, (hereinafter sometimes referred to as the "Act").

IV.

The pertinent events leading up to the filing of this petition for Review are set down in chronological order as follows:

[fol. 3] 1. On August 22, 1947, the Company filed with the Commission an application pursuant to the Act for a license for the purpose of constructing, operating and maintaining of a proposed "major project", including a dam and hydroelectric power plant, to be known as the "Bliss Development" and by the Commission designated as "Project No. 1975", on Snake River in Elmore, Gooding and Twin Falls Counties in the State of Idaho, occupying, in part, lands of the United States.

2. On the same day, the Company filed with the commission an application for pre-license consent to initiate preliminary work, preparatory to major construction operations, in advance of action on the application for license.

3. On September 2, 1947, the Commission notified the Company that immediate pursuit of preparatory work would not prejudice the Commission's subsequent consideration and action on the Company's application for license. (1. above).

4. On March 2, 1948, Commission entered its Order authorizing issuance of major license for Project No. 1975, and containing, *inter alia*, Paragraph 23(g) reserving to the Commission the right to determine "at a later date what transmission facilities should be included in the license as a part of the project." Copy of this Order is filed herewith as Exhibit D.

5. On April 20, 1949, the Company filed with the Commission application for amendment of its original application (1. above), to include as a part of the project and within the license for Project No. 1975 two proposed 138-kilovolt transmission lines, both leading from the Bliss power plant, one northwesterly to near the City of

Boise, and the other easterly to near the City of American Falls, both in the State of Idaho.

6. By reason of urgent necessity for providing additional sources [fol. 4] of power for public use in its Idaho, Oregon and Nevada areas of service, the Company on April 26, 1949 applied for pre-license permission to proceed with construction of the aforesaid two 138-kilovolt lines. On May 2, 1949, the Commission notified the Company that such construction would not prejudice consideration by the Commission of the Company's application for amendment of license (5. above).

7. Thereafter, the Commission entered its Order of October 13, 1949 (Exhibit A) which supersedes the Order of March 2, 1948 (4. above), reauthorizes the license for Project No. 1975, and includes therein the two 138-kilovolt transmission lines (5. above). Among the terms and conditions contained in and made a part of said Order of October 13, 1949 are those designated as Paragraph (F), thereof, comprising ten subparagraphs. Such subparagraphs require, among other things: that, upon request of the Secretary of the Interior, the Company shall, after notice, at the expense of the United States, convert its said transmission lines for operation at a voltage of 230-kilovolts; and that the Company, whether or not the Secretary has made such request, or after conversion by the Company for its own needs, to a higher voltage, shall permit any agency of the United States to interconnect any of its transmission facilities with said two transmission lines of the Company. Such subparagraphs also impose numerous conditions and requirements under which the Company must permit interconnection of its said lines with transmission facilities of the United States for transfer over said transmission lines of the Company of power and energy generated in power plants owned by the United States. Said provisions and requirements are stated in said Order of October 13, 1949 to have been inserted therein at the request of the Secretary of the Interior. Said Paragraph (F), including subparagraphs (1) to (10) inclusive, is the reason for the filing of this Petition for Review.

[fol. 5] 8. Within the time provided by statute and on November 10, 1949, the Company, being aggrieved by said Order of October 13, 1949, filed an application for rehearing with respect to the matters as to which review is now sought.

9. On January 18, 1950, the Commission entered an Order (Exhibit B) modifying its Order of October 13, 1949 (Exhibit A), making certain changes informally requested by the Company but denying the aforesaid application for rehearing, and continuing in effect the objectionable and, in the Company's belief, the unlawful

provisions of said Paragraph (F); and on January 31, 1950 entered certain Errata (Exhibit C) making minor corrections in said Order of January 18, 1950.

V.

The points on which Petitioner intends to rely are:

The Commission erred in including in said Order of October 13, 1949 (Exhibit A) the conditions and requirements of Paragraph (F) thereof, for the following reasons:

(a) Said conditions and requirements, and the imposition thereof, constitute administrative legislation violative of the provisions of the Constitution and laws of the United States; and the imposition thereof at the instance and request of the Secretary of the Interior constitutes an abdication of the Commission's function as an independent agency of the United States, in contravention of the statutes creating the Commission and granting its authority.

(b) Said conditions and requirements, and the imposition thereof, constitute an unlawful extension of the authority of the Commission under the Act, particularly Sections 6 and 10(g), and are not in conformity with the provisions thereof, and are inconsistent therewith, with respect to any of the public lands of the United States that may be here involved.

[fol. 6] (c) Said conditions and requirements, and the imposition thereof, constitute an unlawful extension of the authority of the Commission under the Act, particularly Section 4(e) thereof, and are not in conformity with the provisions thereof, and are inconsistent therewith, as none of said conditions and requirements is related to, or necessary for, the adequate protection and utilization of any reservation of the United States that may be here involved.

(d) Said conditions and requirements constitute a reversal of 30 years of administrative construction in that the Commission has never sought to exercise any such authority from the date of its creation on June 10, 1920, to October 13, 1949. Conditions and requirements of the nature set forth in said Paragraph (F) had never been included in any license previously issued by the Commission since its creation.

(e) Said conditions and requirements, and the imposition thereof, operate to deprive petitioner of its property and property rights without due process of law, and to take the property of petitioner for public use without just compensation, in contravention of the Fifth Amendment to the Constitution of the United States.

(f) Said conditions and requirements, particularly those contained in Paragraph (F) (9) of said Order, are *ex post facto* in

their nature and operation, and in violation of Section 6 of the Act, and contrary to Article I of the Constitution of the United States, and would further subject petitioner to the revocation, alteration, or surrender of the license authorized with respect to said transmission lines, in violation of Section 6 of the Act.

(g) Said conditions and requirements, and the imposition thereof, are arbitrary, capricious, and an abuse of discretion, and not in accordance with law, because the same authorize and would permit the United States to use petitioner's said transmission lines, and [fol. 7] compel petitioner to acquiesce in such use to the exclusion of the petitioner's own use of the entire capacity of such lines, in contravention of the Fifth Amendment to the Constitution of the United States.

(h) Said conditions and requirements are arbitrary and unreasonable in that they are indefinite and uncertain, and in that petitioner cannot be advised of its rights and liabilities thereunder.

(i) Said conditions and requirements, and the imposition thereof, are arbitrary, capricious, and an abuse of discretion in that the same are not authorized by the Act, or by any statute, or by any delegation of power to the Commission, or otherwise.

WHEREFORE, Petitioner prays that said Orders of the Commission be reviewed by this Honorable Court and that this Court enter its judgment and decree, modifying said Order of October 13, 1949 by striking therefrom, annulling and setting aside the conditions and requirements of said Paragraph (F) thereof, and remanding the cause to the Commission for further action consistent with the determination of this Court, and that such other and further relief may be granted as may be proper in the premises.

Respectfully submitted,

(S.) A. C. INMAN
1220 Idaho Street
Boise, Idaho

(S.) HARRY A. POTH, JR.
REID & PRIEST
1518 K Street, N. W.
Washington 5, D. C.
Attorneys for Petitioner.

Dated: February 6, 1950, Washington, D. C.

[fol. 8] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[File endorsement omitted]

No. 10530

IDAHO POWER COMPANY, PETITIONER,

v.

FEDERAL POWER COMMISSION, RESPONDENT

On Petition for Review of Order of the Federal Power Commission

OPINION—Filed May 10, 1951

Mr. A. C. Hinman, of the Bar of the Supreme Court of Idaho, *pro hac vice*, by special leave of Court, and *Mr. Harry Poth, Jr.*, for petitioner.

Mr. Willard W. Gatchell, Assistant General Counsel, Federal Power Commission, with whom *Mr. Bradford Ross*, General Counsel, Federal Power Commission, and *Mr. John C. Mason*, Attorney, Federal Power Commission, were on the brief, for respondent.

Before WILBUR K. MILLER and PRETTYMAN, Circuit Judges, and KIMBROUGH STONE, Circuit Judge, retired (sitting by designation).

PRETTYMAN, *Circuit Judge*:

This is a petition to review an order of the Federal Power Commission, granting a license for the construction, operation and maintenance of a power project on federal lands. Petitioner (hereinafter called the "Company") is a private corporation, a public utility, and was the applicant for the license. Its prayer to this court is that the order of the Commission be modified by striking therefrom certain conditions imposed by the Commission upon the license.

In 1947 the Company applied for a license for the construction, operation and maintenance of a hydroelectric project, including a dam and power plant, located on the Snake River in south-central Idaho, occupying in part lands of the United States. This application was pursuant to Section 4(e) of the Federal Power Act.[1] In 1948 the Commission authorized issuance of the license but re- [fol. 9] served "the right to determine at a later date what transmission facilities should be included in the license as part of the project." In 1949 the Company applied for an amendment of its license to include as a part of the project two proposed high-voltage

[1] 41 Stat. 1065 (1920), as amended, 49 Stat. 840 (1935), 16 U.S.C.A. § 797(e).

(138,000 volts) primary transmission lines. One such line was to run approximately 73 miles from the power plant to a point near the City of Boise. The other was to run approximately 116 miles from the plant to a point near the City of American Falls. Both lines crossed lands of the United States, and both joined the Company's interconnected primary transmission system. The company applied for and was granted pre-license permission to proceed with the construction of the two lines, pending consideration of the application for amendment. In October, 1949, the Commission entered an order, which superseded its original order, authorizing the license. Among other things, this new order authorized the construction of the two 138-kilovolt lines as part of the project but imposed upon such construction and operation certain special conditions.

These special conditions are reproduced in full text in footnote 2 below,[2] but they may be summarized as follows:

---

[2] "(F) The construction and operation of the transmission lines from the Bliss plant to substations near American Falls and Boise shall be subject to the following special conditions:

"(1) The licensee shall not convert said lines to permit operation at a higher voltage without prior approval of the Commission. Upon the request of the Secretary of the Interior, under appropriate authority, the licensee shall, after notice of at least one year from the Commission and within the time fixed by the Commission, convert said lines for operation at a voltage of 230 kv at the expense of the United States.

"(2) After the initial construction of the lines or upon conversion of the lines to a higher voltage as herein provided, the licensee shall permit the United States, and the United States shall have the right, to interconnect any of its transmission facilities with said lines in a manner conforming to approved standards of practice for the interconnection of transmission circuits provided there is capacity available in said line or lines in excess of the needs of the licensee. The expense of such interconnection, including the expense of additional switching, relaying, and other protective devices, shall be borne by the United States, provided, however, that no such interconnection may be made without the prior approval of the Commission.

"(3) Upon completion of any such interconnections, the United States shall have the right to transfer energy over said lines as initially or ultimately constructed in such amounts as will not unreasonably interfere with the licensee's use of said lines provided that the licensee shall be obligated to allow the transmission over the said lines by the United States of electric energy only to consuming facilities of the United States and to public bodies and cooperatives entitled to statutory preference in connection with the distribution and sale of electric energy by the United States.

"(4) After any such interconnection of the facilities of the United States with said lines the licensee shall, except in emergencies, maintain in a closed position all connections under the licensee's control between the licensee's lines and the interconnecting facilities provided by the United States.

[fol. 10] The Company shall not convert the lines to permit operation at a higher voltage without prior approval of the Commis-

"(5) Any interconnected power systems of the United States and the licensee shall be operated in parallel and in such manner as to render good and adequate service. Any inadvertent flow of energy from the lines of the United States into said lines or from said lines into the lines of the United States which may occur while the lines of both the licensee and the United States are electrically interconnected shall mutually be compensated for by later return in kind. Any scheduled transfer of energy over said lines for the account of the United States shall be settled for, or any investment in said lines made by the United States shall be liquidated, on reasonable terms under agreements which shall be negotiated between the licensee and the United States, said agreements to be subject to approval by the Commission.

"(6) Until such agreements are completed, settlement for any such scheduled transfers of power shall be made on the following basis: If power and energy from the lines of the United States is transmitted over these lines, the monthly payment for such transmission shall be the amount of dollars representing that part of the monthly cost to the licensee of the section of the line or lines over which the power and energy is transmitted which the maximum transmission by the United States in kilowatts during the month bears to the kilowatt capacity of such section of line or lines. The monthly cost to the licensee referred to herein shall be computed in conformity with the uniform system of accounts prescribed by the Commission.

"(7) In the event the licensee, its successors or assigns, during any period in which the United States is transmitting power over these lines, shall require reciprocal accommodations for the transfer of power from these project lines over any lines of the United States connected to said lines of the licensee, such reciprocal accommodations shall be accorded to the licensee under like terms and conditions as herein provided for the transfer of power from the lines of the United States over said lines of the licensee.

"(8) If, at any time subsequent to the date upon which the licensee commences the transmission of energy over said lines for the United States, the licensee notifies the Commission that the licensee needs for the transmission of electric energy in connection with its operations the whole or any substantial part of the capacity of the said lines, or part thereof, then being utilized by the United States, and the licensee makes satisfactory provision for reimbursement to the United States of the original cost to the United States of the facilities desired by the licensee, less accrued depreciation on the investment of the United States, the licensee may modify or revoke the then existing agreement to remain interconnected and to transmit energy for the United States by giving to the Commission 30 months' notice, of the licensee's intention to utilize additional capacity or the entire capacity of the lines, or part thereof, as the case may be, provided, however, that the United States may continue to utilize any capacity in the said lines to the extent that said capacity, if any, was provided by the United States at its expense without reimbursement by the licensee.

"(9) If at any time in the future the said lines of the licensee are proposed for alteration or are altered, the Commission reserves the right, after 30 days' notice and opportunity for hearing, to make a determination as to whether

sion, but, upon request of the Secretary of the Interior and after one year's notice from the Commission, the Company shall convert the lines for operation at 230 kilovolts. The Company shall permit the United States to interconnect any of its (*i.e.*, the United States') transmission facilities with these two lines, provided there is capacity available in the lines in excess of the needs of the Company. Upon completion of such interconnections the United States shall have the right to transfer energy over the lines in such amounts as will not unreasonably interfere with the Company's use of the lines. After any such interconnection the Company shall, except [fol. 11] in emergencies, maintain in a closed position all connections between the Company's lines and the interconnecting facilities of the United States. If, after the Company commences transmission of energy over its lines for the United States, the Company notifies the Commission that it needs the whole or any substantial part of the capacity of the lines then being utilized by the United States, the Company may modify or revoke the agreement to remain interconnected by giving the Commission 30 months' notice. Any agreement between the Company and the United States in connection with the transmission lines shall be effective only upon approval by the Commission. In the event the Company and the United

---

the lines after such alteration, either proposed or actual, will be subject to licensing by the Federal Power Commission under the then existing laws and regulations, and in the event that the Commission finds that the said alteration in the lines, either proposed or actual, so changes the functions served by said lines and the source of energy transmitted over said lines as to make them, or any part of them, not subject to the licensing authority of the Commission under the then existing laws and regulations, the licensee hereby agrees to secure authority for the continued operation and maintenance of the lines, or such part of the lines, from the appropriate agency of the United States then having jurisdiction over the lands of the United States occupied by the lines, or part thereof, and upon securing said authority the licensee hereby agrees to surrender the license insofar as it authorizes operation and maintenance of the lines, or such parts thereof, which are found to be no longer subject to Commission jurisdiction. In the event that the licensee should fail to surrender the license insofar as it is applicable to the lines, or parts thereof, which may then be found by the Commission not to be subject to its jurisdiction, the Commission reserves the right to take appropriate action to have the license terminated with respect to said lines, or parts thereof, as provided in the then existing laws and regulations.

"(10) Any agreement between the licensee and the United States in connection with said transmission lines or related facilities shall be effective only upon approval by the Commission. In the event the licensee and any agent of the United States are unable to agree with respect to any matter arising in connection with said transmission lines or related facilities, the question thereby raised shall be submitted to the Commission for determination."

States are unable to agree with respect to any matter arising in connection with the transmission lines, the question thereby raised shall be submitted to the Commission for determination.

In sum, the Commission required, as conditions to the license, that the licensee agree to increase the capacity of its lines at Govern- [fol. 12] ment request and thereafter to transmit Government power, the lines to remain interconnected unless and until thirty months' notice is given. The question presented by this petition for review is whether the Commission has authority to impose those conditions upon a licensee for the construction and operation of a power project upon federal lands under the terms of the Federal Power Act.

It is necessary that we first delimit the question. There is no doubt as to the power of Congress to impose such conditions as are proper in its judgment to be imposed upon the use of public lands. The Constitution [3] specifically provides: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; . . ."

No question of contract is involved. No question is raised as to the character of the transmission lines as primary and thus as part of the power project within the meaning of the statute. No question is raised as to the financial terms incorporated in the proposed conditions; the terms of the license as proposed by the Commission include detailed provisions as to compensation to the Company by [fol. 13] the United States for the expense of converting the lines and for transmitting energy of or for the United States.

As thus delimited the question before us is: Has Congress conferred upon the Commission authority to impose upon a license for a power project on public lands requirements that the licensee increase the proposed capacity of its primary transmission lines, interconnect those lines with power projects of the United States, and transmit over its lines for the United States power generated by or belonging to the United States? We are of opinion that the Commission does not have the statutory authority which it here claims.

The question whether the United States should require a private company, licensed to construct a private power plant on public lands or to cross public lands with its transmission lines, to interconnect its facilities with public power projects, was a major one in the consideration of the policies and terms of power development upon public property. It was a highly controversial issue. During

[3] Art. IV, § 3, cl. 2.

the course of the consideration of the bill which eventually became the Federal Power Act, the subject was broached at least three times, and upon each occasion the witness testifying on behalf of the bill as the representative of the Power Commission assured the Congress that the proposed bill did not make it possible for the Government to utilize the transmission lines of private companies or to require the transmission of power generated by a Government plant over the lines of private operating companies. Three excerpts from this testimony are reproduced in footnote 4 below.[4] Finally

[4] *Hearings before House of Representatives Committee on Interstate and Foreign Commerce on H. R. 5423*, 74th Cong., 1st Sess. (1935):

"Mr. WOLVERTON. Under the provisions of this bill, would it be possible for the Government in any of its electric operations to utilize the transmission lines of private compdies?

"Mr. DEVANE. No, sir; and I want to make that very definite; and if there is any doubt about it, so far as I am concerned, such amendment might be made as to make it clear. . . .

". . . If . . . it is the desire of Congress not to . . . give the municipal or governmental projects the right to use the the transmission lines of private industry—and we have not succeeded in making that clear in this bill—an amendment should be proposed that will do it better. It will receive our hearty endorsement.

"Mr. WOLVERTON. Let me suggest a possible situation. Your answer will clarify my mind considerably as to the effect of this bill in the particular instance. Assume that a municipality built a plant for the generation and distribution of electric energy; assume that a distant community is served by a company that comes under the regulations of this bill in that it procures its electric energy from outside of the State. Could the city which has constructed a plant, but has no transmission lines, utilize the system of transmission lines constructed by the private company?

"Mr. DEVANE. No, sir.

"Mr. WOLVERTON. Then, you do not think that the power given in this bill to the Federal Power Commission would enable it to direct that those transmission lines be so used?

"Mr. DEVANE. Mr. Wolverton, my answer to that is this: That if there is any doubt about it and this committee can remove that doubt by additional words in this bill, let us put them in." (Pp. 514-515.)

"Mr. MAPES. Is it the purpose to compel the privately owned transmission companies to carry the energy of municipal projects as well as private projects?

"Mr. DEVANE. No, sir; I thought I had made that very clear. If I did not, I want to make it very clear now. It is not intended to give the Commission power to require the private lines to take on any power generated by municipal plants or by any Government plant." (P. 546.)

"Mr. DEVANE. . . . The only thing we have discussed is the desirability of making it perfectly clear in this law that it is not the intention of this law to reach out and get control of that power nor is it the intention of this law to authorize this Commission to require the transmission of that power on the lines of these private operating companies." (P. 559.)

[fol. 14] Congress inserted in the statute, as Section 201 (f)[5] a provision that no provision in that Part of the statute shall be deemed to include the United States or any of its agencies. That Part is the Part which deals with, among other things, the interconnection and coordination of facilities. The specific exclusion of the facilities of the United States from the possibility of interconnection and coordination under the terms of that Part of the statute seems clearly to be a declaration of congressional intent upon the subject. So much seems plain enough.

At this point the argument turns to specific terms in the statute. The Federal Power Act is in Parts. Part I deals with licenses and Part II deals with the interconnection of facilities. The exclusion of the United States, which we have just discussed, is in Part II, and its language is: "No provision in this Part shall apply to, or be deemed to include, the United States. . . ."[6] The Commission says that under this language the exclusion applies only to provisions of Part II and has no application to licenses, which are treated in Part I.

We examine Part I. It prescribes the conditions upon which licenses should be issued. It does not mention interconnection with [fol. 15] Government facilities or transmission of Government energy as permissible conditions. But the Commission points to the catchall clause at the end of the specified conditions. That general clause, read in conjunction with the introductory clause of the Section, is: "All licenses issued under this Part shall be on the following conditions: . . . (g) Such other conditions not inconsistent with the provisions of this Act as the Commission may require."[7]

The language prohibits conditions inconsistent with other provisions "of this Act"—not of Part I alone but of the Act. The exclusion of the United States from interconnecting arrangements, while in Part II, is nevertheless in the Act. And so this general clause in Part I, upon which the Commission relies, forbids conditions upon licenses inconsistent with other provisions throughout the Act. Specifically, it forbids, among other things, a condition inconsistent with the exclusion of the United States from interconnection arrangements.

The Commission next says that its general power to prescribe conditions must be interpreted in the light of the opening clauses of the Section (Section 10, which is in Part I) which relates to those conditions. The first subparagraph in that Section reads, in perti-

[5] 49 Stat. 848 (1935), 16 U.S.C.A. § 824(f).

[6] Sec. 201(f), 49 Stat. 848 (1935), 16 U.S.C.A. § 824(f).

[7] Sec. 10(g), 41 Stat. 1070 (1920), as amended, 49 Stat. 844 (1935), 16 U.S.C.A. § 803(g).

nent part: "'All licenses issued under this Part shall be on the following conditions. (a) That the project adopted . . . shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, . . .'" The Commission says that the interconnection of the Company's transmission lines with Government generating and transmission facilities is best adapted to a comprehensive plan for developing a waterway for beneficial public uses and for the improvement and utilization of water-power development in the area. The Section last quoted (Section 10) obviously applies primarily to the type, location, size and purpose of the project. We think that its terms cannot be construed to require the interconnection of private facilities with public facilities and the compulsory transmission of public power by a private company, in view of the fact that Congress specifically forbade such interconnections in the Part of the statute which deals with that subject.

The problem which is presented to us in this case is essentially a legislative problem. Congress has ample power, as we have said, to prescribe the conditions upon which the water-power potentialities of public lands shall be developed. Its only declaration upon the interconnection of Government and private facilities is the one to which we have referred and which precludes that interconnection. [fol. 16] If the Commission believes it to be in the public interest to prescribe such a condition upon power project licenses, it should present its views to the Congress.

The order of the Commission will be modified by the elimination therefrom of paragraph (F), and the order as thus modified will be affirmed. 49 Stat. 869 (1935), 16 U.S.C.A. Sec. 825l(b).

Modified, and affirmed as modified.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1951

No. 10,530

IDAHO POWER COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

On Petition for Review of an Order of the Federal Power Commission

Before: WILBUR K. MILLER and PRETTYMAN, *Circuit Judges*, and KIMBROUGH STONE, *Circuit Judge, retired* (sitting by designation).

JUDGMENT AND DECREE—Filed May 10, 1951

This cause came on to be heard on the transcript of the record from the Federal Power Commission, and was argued by counsel.

On consideration whereof, It is ordered, adjudged and decreed by this Court that the order of the said Federal Power Commission on review in this cause be modified, and that this cause be, and it is hereby, remanded to the Federal Power Commission for the entry of an order in accordance with the opinion of this Court.

Per Circuit Judge PRETTYMAN.

Dated: May 10, 1951.

[File endorsement omitted.]

[fol. 16a] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,530

IDAHO POWER COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

MOTION OF RESPONDENT FEDERAL POWER COMMISSION FOR CLARIFICATION OF JUDGMENT

The Federal Power Commission, respondent, by its counsel, hereby respectfully moves the Court for clarification of the opinion and judgment in the above-entitled proceeding, and in support of its motion shows the following:

1. On May 10, 1951, this Honorable Court issued its opinion and judgment granting the petition of Idaho Power Company to modify the order of the Commission issued October 13, 1949 (as modified by order issued January 18, 1950). The Court stated in the final paragraph:

> The order of the Commission will be modified by the elimination therefrom of paragraph (F), and the case will be remanded to the Commission for the entry of an order in accordance with this opinion.
>
> Remanded for modification of order.

2. It is clear from the quoted paragraph that paragraph (F) of the Commission's order must be eliminated. However, it is not clear whether the opinion and judgment requires the Commission to enter an order in the exact form of the original order, after eliminating paragraph (F), or whether the Commission is free to reconsider the remainder of the order and to enter such other order as it deems warranted in the exercise of its administrative discretion under the Federal Power Act. The ruling of the Court may be interpreted as requiring the Commission to readopt its order without paragraph (F), which would be a determination by this Court, rather than the Commission, that as so amended the order would be in the public interest. The determination of whether a license should issue without paragraph (F), or what license conditions, if any, may be otherwise appropriate, is a determination for which the Commission has been given primary responsibility and the responsibilities of the Commission under the Federal Power Act should not be predetermined by this Court.

[fol. 16b] 3. The more reasonable view appears to be that the quoted paragraph of the opinion and judgment means no more than that the Commission in its further action upon remand is to respect and follow the Court's determination of the question of law (lack of authority to impose paragraph (F)) but is not foreclosed from further exercising its administrative discretion in issuing a further order in this case which may differ from its original order. *Texas and Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, 444 (1906); *Fed. Radio Comm.* v. *Nelson Bros.*, 289 U.S. 266, 278 (1932); *Ford Motor Co.* v. *N.L.R.B.*, 305 U.S. 364, 374 (1938); *F.C.C.* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 145-6 (1940)

4. In view of the above it is respectfully requested that this Honorable Court clarify its opinion and judgment to make it certain that the Commission may reconsider the provisions of its order, other than paragraph (F), and may exercise its administrative discretion in modifying the order in accordance with the provisions of the Federal Power Act after eliminating paragraph (F).

Respectfully submitted,

(S.) BRADFORD ROSS,
General Counsel.

[fol. 16c] No. 10,530

IDAHO POWER COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

Before: WILBUR K. MILLER and PRETTYMAN, *Circuit Judges*, and KIMBROUGH STONE, *Circuit Judge*, retired (sitting by designation).

Order

On consideration of respondent's motion for clarification of the opinion and judgment of this Court in the above-entitled cause, it is

Ordered by the Court that the opinion filed herein May 10, 1951, be and it is hereby, modified by striking therefrom the last paragraph and the words "Remanded for modification of order" following said paragraph, and that in lieu thereof the following be inserted:

> "The order of the Commission will be modified by the elimination therefrom of paragraph (F), and the order as thus modified will be affirmed. 49 Stat. 860 (1935), 16 U.S.C.A. Sec. 825l(b).
>
> Modified, and affirmed as modified."

It is further ordered by the Court that the judgment and decree entered in this cause on May 10, 1951, be, and it is hereby, amended to read as follows:

[fol. 16d] "This cause came on to be heard on the transcript of the record from the Federal Power Commission, and was argued by counsel.

"On consideration whereof, It is ordered, adjudged and decreed by this Court that the order of the said Federal Power Commission on review in this cause be, and it is hereby, modified by striking therefrom paragraph (F) thereof, and that the order of the Federal Power Commission herein as thus modified be, and it is hereby, affirmed."

Per Circuit Judge PRETTYMAN.

Dated: September 21, 1951.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT
April Term, 1951

No. 10,530

IDAHO POWER COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

Order

It appearing that the Court on September 21, 1951 entered an order amending the opinion and judgment of this Court entered herein May 10, 1951, it is

Ordered by the Court that the certified copies of the opinion and judgment of this Court in the above-entitled case, which issued to the Federal Power Commission on May 29, 1951, be recalled, and that the Clerk be, and he is hereby, directed to issue to the Federal Power Commission certified copies of the opinion and judgment of this Court as modified by the order of this Court dated September 21, 1951.

Per Curiam.

Dated: September 24, 1951.

United States Court of Appeals for the District of Columbia Circuit. Filed September 24, 1951. Joseph W. Stewart, Clerk.

United States Court of Appeals for the District of Columbia Circuit. Filed November 29, 1951. Joseph W. Stewart, Clerk.

[fol. 16e] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1951

No. 10,530

IDAHO POWER COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

Before: WILBUR K. MILLER and PRETTYMAN, *Circuit Judges*, and KIMBROUGH STONE, *Circuit Judge, retired* (sitting by designation).

JUDGMENT AND DECREE

This cause came on to be heard on the transcript of the record from the Federal Power Commission, and was argued by counsel.

On consideration whereof, It is ordered, adjudged and decreed by this Court that the order of the said Federal Power Commission on review in this cause be, and it is hereby, modified by striking therefrom paragraph (F) thereof, and that the order of the Federal Power Commission herein as thus modified be, and it is hereby, affirmed.

Per Circuit Judge PRETTYMAN.

Dated May 10, 1951.

[fol. 16f] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

I, JOSEPH W. STEWART, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing is a true copy of the judgment and decree of the said Court of Appeals dated May 10, 1951, as same was amended by the order entered September 21, 1951, in the case of:

IDAHO POWER COMPANY, PETITIONER,

v.

FEDERAL POWER COMMISSION, RESPONDENT.

No. 10,530, April Term, 1952, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix

the seal of said Court of Appeals, at the city of Washington, this first day of February, A. D. 1952.

[SEAL]

United States Court of Appeals for the District of Columbia Circuit

JOSEPH W. STEWART

Clerk of the United States Court of Appeals for the District of Columbia Circuit.

[fol. 17] **IN UNITED STATES COURT OF APPEALS**
[Title Omitted]

CERTIFICATE OF TRANSCRIPT OF RECORD—March 20, 1950

Pursuant to the provisions of Section 313(b) of the Federal Power Act, the Federal Power Commission, in connection with the above-entitled proceeding, hereby certifies that the documents described below and attached hereto are true and correct copies of said documents now on file with the Commission and constitute the transcript of the record upon which its orders, complained of, were entered in the matter of Idaho Power Company, Project No. 1975

Description of Document	*Volume*	*Page*
Letter, dated August 22, 1947, from Leighton and Gamble, transmitting application for license, filed August 22, 1947	1	1
Application for license and exhibits, filed August 22, 1947	1	3
Letter, dated August 25, 1947, from Leighton and Gamble, making corrections in letter filed August 22, 1947, filed August 25, 1947.	1	26
Letter, dated August 29, 1947, from Leighton and Gamble, making correction in letter and application filed August 22, 1947, filed August 29, 1947.	1	27
Letter, dated September 2, 1947, from Federal Power Commission to Idaho Power Company, advising that drilling of test holes and performance of other preliminary work will not prejudice consideration of application for license.	1	28
Letter, dated September 15, 1947, notifying Public Utilities Commission of Idaho of filing of application for license.	1	29
Letter, dated September 16, 1947, notifying the Governor of Idaho and other parties of filing of application for license.	1	30
Notice, dated September 19, 1947, of application for license, filed with the Federal Register Division, National Archives, for publication.	1	32
[fol. 18] Proof of publication of Notice of Application in the Times-News, Twin Falls, Idaho, filed October 31, 1947.	1	33

Description of Document	Volume	Page
Proof of publication of Notice of Application in the Gooding Leader, Gooding, Idaho, filed November 17, 1947.	1	34
Letter, dated November 26, 1947, from Idaho Power Company, transmitting amendment to application for license, together with certain exhibits, filed December 3, 1947.	1	35
Amendments to application for license, together with amended and supplemental exhibits, filed December 3, 1947.	1	36
Letter, dated December 8, 1947, from Leighton and Gamble, making correction in application last above, filed December 9, 1947.	1	66
Letter, dated December 22, 1947, from FPC to the Chief of Engineers, Department of the Army, transmitting application for license and exhibits for report and approval in accordance with Section 4(e) of the Federal Power Act.	2	67
Letter, dated December 22, 1947, from FPC to the Secretary of Interior, transmitting application for license and exhibits for report under Sections 4(e) and 18 of the Federal Power Act and the provisions of Public Law 732, 79th Congress, 2nd Session, approved August 14, 1946.	2	69
Letter, dated December 26, 1947, from FPC to Public Utilities Commission of Idaho, notifying it of filing of amendment to application for license.	2	71
Letter, dated December 26, 1947, from FPC to the Chairman, Board of County Commissioners, Elmore County, Idaho, and the Mayor, Glenns Ferry, Idaho, notifying them of the filing of application for license.	2	72
Letter, dated December 26, 1947, from FPC to the Governor of Idaho and other agencies and officials, notifying them of the filing of amendments to application for license.	2	73
Notice, dated December 26, 1947, of amended application for major license, forwarded to the Federal Register Division of the National Archives for publication.	2	75
Letter, dated January 2, 1948, from Public Utilities Commission of Idaho commenting on amended application, filed January 6, 1948.	2	76

Description of Document	Volume	Page
Comments, dated January 10, 1948, of the State of Idaho Departments of Fish and Game, filed January 16, 1948.	2	77
Proof of publication of Notice of Amendment to Application in the Times-News, Twin Falls, Idaho, filed February 2, 1948.	2	78
Letter, dated February 9, 1948, from Idaho Power Company, transmitting copies of revised Exhibits C, D, E, and F, filed February 13, 1948.	2	80
[fol. 19] Revised Exhibits C, D, E, and F, filed February 13, 1948.	2	81
Report, dated February 19, 1948, of the Secretary of Interior, filed February 20, 1948.	2	83
Proof of publication of Notice of Amendment to Application in the Mountain Home News, Mountain Home, Idaho, filed February 26, 1948.	2	85
Order authorizing issuance of license, entered March 2, 1948, and issued March 3, 1948.	2	87
Letter, dated March 3, 1948, serving order last above on Applicant and other interested parties.	2	92
Notice, dated March 4, 1948, of order authorizing issuance of license forwarded to the Federal Register Division of the National Archives for publication.	2	93
Report, dated March 9, 1948, of the Chief of Engineers, filed March 12, 1948.	2	94
Proof of publication of Notice of Amendment to Application for license in the Gooding Leader, Gooding, Idaho, filed March 15, 1948.	2	96
Letter, dated March 18, 1948, from FPC, notifying the Bureau of Land Management, Department of Interior, of the reservation from entry, etc., pursuant to Section 24 of the Federal Power Act, of lands of the United States included in the project.	2	98
Letter, dated March 22, 1948, from FPC to Idaho Power Company, forwarding Exhibits J, K and L for correction by Applicant.	2	99

Description of Document	Volume	Page
Letter, dated May 25, 1948, from Leighton and Gamble, transmitting the revised Exhibit L, Sheets 1 to 3, inclusive.	2	100
Revised Exhibit L, Sheets 1 to 3, inclusive, filed May 25, 1948.	2	101
Letter, dated May 27, 1948, from Geological Survey, Department of Interior, relating to stream gaging requirements, filed May 28, 1948.	2	104
Supplemental report, dated May 27, 1948, by the Secretary of Interior, filed May 28, 1948.	2	106
Letter, dated June 3, 1948, from Leighton and Gamble, transmitting revised Exhibit L, Sheet 4, filed June 3, 1948.	3	108
Revised Exhibit L, Sheet 4, filed June 3, 1948.	3	109
Application for supplementary amendments to application for license requesting authority to construct, operate and maintain two transmission lines as part of the project, together with exhibits, filed April 20, 1949.	3	110
[fol. 20] Letter, dated April 26, 1949, from Leighton and Gamble, requesting on behalf of Applicant that the Commission give pre-license consent immediately to commence construction of two primary transmission lines.	4	140
Letter, dated May 2, 1949, from FPC to Idaho Power Company, advising that pre-license construction of the two transmission lines at its own risk, subject to the requirements of the agencies having jurisdiction over the Government lands involved, will not prejudice consideration by the Commission of the application filed April 20, 1949.	4	143
Letter, dated July 1, 1949, from M. O. Leighton, transmitting revised Exhibit F and Exhibits J, K and P, filed July 1, 1949.	4	144
Revised Exhibit F and Exhibits J, K and P, filed July 1, 1949.	4	146
Letter, dated July 29, 1949, from FPC, forwarding revised Exhibits J and L to the Chief of Engineers for approval and a supplemental report.	4	163

Description of Document	*Volume*	*Page*
Letter, dated July 29, 1949, to the Secretary of Interior, forwarding application filed April 20, 1949, as amended, and requesting a report pursuant to Section 4(e) of the Federal Power Act.	4	164
Report, dated August 10, 1949, of the Secretary of Interior, filed August 11, 1949.	4	166
Letter, dated August 16, 1949, from FPC to Idaho Power Company, transmitting copy of the report of the Secretary of Interior last above.	4	171
Report, dated August 10, 1949, of the Chief of Engineers, filed August 19, 1949.	4	172
Letter, dated August 24, 1949, from FPC, notifying the Bureau of Land Management, Department of Interior, of the reservation from entry, etc., pursuant to Section 24 of the Federal Power Act, of lands of the United States included in the project.	4	174
Letter, dated September 9, 1949, from Idaho Power Company, together with enclosures, relative to the report of the Secretary of Interior, filed September 12, 1949.	4	179
Letter, dated August 23, 1949, from the Secretary of Interior, transmitting Appendices A and B, together with said Appendices A and B supplementing the report filed by the Secretary of Interior on August 11, 1949, filed August 24, 1949.	4	200
Letter, dated September 19, 1949, from FPC to the Secretary of Interior, inviting further report with respect to licensing conditions relating to transmission lines.	4	213
Letter, dated September 23, 1949, from M. O. Leighton, making corrections in letter field September 12, 1949, filed September 23, 1949.	4	214
[fol. 21] Letter, dated September 29, 1949, from FPC to the Secretary of Interior, requesting that conditions relating to transmission lines be submitted by October 3, 1949.	4	215
Further report, dated October 4, 1949, by the Secretary of Interior, together with enclosures, filed October 4, 1949.	4	216

Description of Document	*Volume*	*Page*
Letter, dated October 5, 1949, from FPC to Idaho Power Company, transmitting a copy of the report by the Secretary of Interior.	4	221
Letter, dated November 10, 1949, from Idaho Power pany, commenting on report of Secretary of Interior, filed October 6, 1949.	4	222
Order superseding order authorizing issuance of license, entered and issued October 13, 1949.	4	225
Letter, dated October 13, 1949, from the Secretary of Interior, transmitting complaint.	4	236
Complaint of the Secretary of Interior, filed October 13, 1949.	4	237
Letter, dated October 13, 1949, from FPC, serving order entered and issued October 13, 1949, on interested parties.	4	244
Letter, dated October 14, 1949, from FPC, serving complaint of Secretary of Interior.	4	245
Notice, dated October 14, 1949, on order superseding order authorizing issuance of license, sent to the Federal Register Division of the National Archives for publication.	4	246
Applicant's petition for rehearing, filed November 10, 1949.	4	247
Letter, dated October 5, 1949, from Idaho Power Com-Company, relating to complaint of Secretary of Interior, filed November 14, 1949.	4	251
Letter, dated November 14, 1949, from Idaho Power Company, requesting reconsideration and modification of order issued October 13, 1949.	4	252
Letter, dated November 17, 1949, by the Secretary of Interior, relating to provisions of order issued October 13, 1949.	4	258
Letter, dated November 28, 1949, from FPC to the Secretary of Interior, in reply to letter last above.	4	260
Modification of petition for rehearing by Idaho Power Company, filed November 30, 1949.	4	261

Description of Document	*Volume*	*Page*
Report, dated November 30, 1949, by the Secretary of Interior, filed December 1, 1949.	4	262
Statement of the Secretary of Interior in opposition to the Applicant's petition for rehearing, filed December 1, 1949.	4	263
[fol. 22] Order extending time for action upon petition for rehearing, entered December 13, 1949, and issued December 14, 1949.	4	273
Letter, dated December 14, 1949, from FPC, serving a copy of order last above.	4	274
Order modifying order of October 13, 1949, authorizing issuance of license, entered and issued January 18, 1950.	4	275
Letter, dated January 18, 1950, from FPC, serving order last above.	4	278
Notice, dated January 19, 1950, of order modifying order of October 13, 1949, authorizing issuance of license, sent to the Federal Register Division of the National Archives for publication.	4	279

By the Commission.

In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 20th day of March, A. D., 1950, at Washington, D. C.

[Seal]

LEON M. FUQUAY
Secretary

[fol. 23] BEFORE THE FEDERAL POWER COMMISSION

Executed Copy

Project No. 1975

APPLICATION FOR LICENSE

1. Idaho Power Company, a corporation organized under the laws of the State of Maine, and having its office and principal place of business at Boise, in the State of Idaho, hereby makes application to the Federal Power Commission for a license to authorize the construction, operation and maintenance of certain project works fully described herein.

2. The name, title and post-office address of the person to whom correspondence in regard to this application shall be addressed is as follows:

Leighton and Gamble
National Savings and Trust Building
Washington 5, D. C.

The Commission is also respectfully requested to mail copies of all correspondence in regard to this application directly to

A. C. Inman
Secretary, Idaho Power Company
1220 Idaho Street
Boise, Idaho

3. The applicant is a corporation and is organized under the following laws: Organized under the laws of the State of Maine; qualified and doing business in and under the laws of the States of Idaho, Oregon and Nevada.

4. The measure of control or ownership exercised by the applicant in any other organization or over applicant by any other organization is as follows: None.

5. The applicant operates in the following states: Idaho, Oregon and Nevada.

[fol. 24] 6. A concise general description of the project and the principal project works is as follows:

The project, to be known as the Bliss Power Plant, will include a dam across Snake River of a height sufficient to provide a top reservoir elevation of approximately 2736,* backing the water up to the Lower Salmon (Project 457) power plant tailrace, a distance of approximately ten miles. Four vertical water wheel driven units of approximately 25,000 kw capacity will be installed, providing a total capacity of about 100,000 kw.

(a) Dams and Reservoirs—The dam will be of concrete. The reservoir formed by the dam will be fluctuated approximately five feet, to provide for daily fluctuations of load at a load factor of between 60 and 70 per cent.

(b) Water Conduits—No water conduits will be required except those necessary to bring the water from the forebay to the turbine scroll case.

(c) Powerhouses, Substations, and Switchyards—The powerhouse will consist of a reinforced concrete substructure supporting four semi-outdoor type generators. A gantry crane will be provided for assembling and dismantling of units. Step-up transformers will be mounted on the power plant structure. The switchyard will be erected on the bench land immediately above the powerhouse site.

(d) Transmission Lines—The plant will be connected by tap line to the Company's 138-kv transmission network.

7. The location of the project applied for is as follows:

(a) In the State of Idaho.

(b) In the Counties of Gooding and Twin Falls.

(c) On the following named stream—Snake River, carrying commerce to the following extent: None.

(d) In the region of the following named cities and towns: Approximately 3 miles westerly of the village of Bliss, Idaho; between the cities of Glenns Ferry and Gooding, Idaho.

* Lr. M.O.L. 8/29/47 RDH

FACSIMILE

[redacted]

6. A concise general description of the project and the principal project works is as follows:

The project, to be known as the Bliss Power Plant, will include a dam across Snake River of a height sufficient to provide a top reservoir elevation of approximately 2736, backing the water up to the Lower Salmon (Project 457) power plant tailrace, a distance of approximately ten miles. Four vertical water wheel driven units of approximately 25,000 kw capacity will be installed, providing a total capacity of about 100,000 kw.

(a) Dams and Reservoirs - The dam will be of concrete. The reservoir formed by the dam will be fluctuated approximately five feet, to provide for daily fluctuations of load at a load factor of between 60 and 70 per cent.

(b) Water Conduits - No water conduits will be required except those necessary to bring the water from the forebay to the turbine scroll case.

(c) Powerhouses, Substations, and Switchyards - The powerhouse will consist of a reinforced concrete substructure supporting four semi-outdoor type generators. A gantry crane will be provided for assembling and dismantling of units. Step-up transformers will be mounted on the power plant structure. The switchyard will be erected on the bench land immediately above the powerhouse site.

(d) Transmission Lines - The plant will be connected by tap line to the Company's 138-kv transmission network.

7. The location of the project applied for is as follows:

(a) In the State of Idaho.

(b) In the Counties of Gooding and Twin Falls.

(c) On the following named stream - Snake River, carrying commerce to the following extent: None.

(d) In the region of the following named cities and towns: Approximately 3 miles westerly of the village of Bliss, Idaho; between the cities of Glenns Ferry and Gooding, Idaho.

[fol. 25] 8. Lands of the United States which will be affected are located in public domain.

9. The proposed scheme of development for the project is as follows:

See Item 6, above. Concrete dam across Snake River, with adjacent power plant structure housing four vertical water wheel driven generators of approximately 25,000 KW each, aggregating 100,000 KW of total installed capacity. Water will be discharged into main channel of Snake River from and immediately below power plant. Power available 90% of the time is estimated at 75,000 horsepower (56,000 KW).

Applicant desires to begin construction of dam and powerhouse in 1947, so that first two units will be completed for operation during summer of 1950. Present plans are for installation of third and fourth units during 1951-1952, for operation during summer of 1952. Conditions of load growth may hasten or retard installation of last two units.

10. The proposed use or market for the power to be developed is as follows:

Applicant is a public utility and subject to regulation by the regulatory authorities in all states in which applicant operates, namely, Idaho, Oregon and Nevada. Power will be distributed for residential, farm, commercial, industrial, municipal, public utility and interchange uses and purposes on and through the interconnected system of applicant. See map, Exhibit P.

[fol. 26] 11. The location, a brief description, and capacity of all power plants owned or operated by the applicant, the markets supplied thereby, and the relation thereof to the project applied for are briefly described as follows:

For locations of power plants and markets supplied thereby, see map, Exhibit P, filed herewith. Further information con-

cerning power plants comprising applicant's interconnected system is as follows:

Power Plants	Approximate Location	Installed Capacity-KW	Ultimate Capacity-KW	Source of Water
Existing				
American Falls	Power Co., Idaho	27,000	27,000	Snake River
Twin Falls	Twin Falls Co., Idaho	9,375	13,500	" "
Shoshone Falls	Jerome Co., Idaho	12,500	12,500	" "
Clear Lake	Gooding Co., Idaho	2,100	3,500	Clear Lake Springs
Thousand Springs	Gooding Co., Idaho	7,500	7,500	Thousand Springs
Upper Salmon	Twin Falls Co., Idaho	34,500*	34,500	Snake River
Lower Salmon	Gooding Co., Idaho	7,200	60,000	" "
Lower Malad	Gooding Co., Idaho	5,000	13,500	Malad Springs
Swan Falls	Ada County, Idaho	11,000	11,000	Snake River
Oxbow	Baker Co., Oregon	600	140,000	" "
Horseshoe Bend	Boise County, Idaho	1,800	1,800	Fayette River
Barber	Ada County, Idaho	1,050	1,050	Boise River
Cascade	Valley Co., Idaho	300	300	Fayette River
Bellevue	Blaine Co., Idaho	600	600	Wood River
Total Installed Capacity		120,525		

* Includes one 8250 KW unit to be in operation in August, 1947, and one 8250 KW unit to be in operation in September, 1947.

Under Construction				
Lower Salmon	Gooding Co., Idaho	52,800	60,000	Snake River
Lower Malad	Gooding Co., Idaho	8,500	13,500	Malad Springs
Upper Malad	Gooding Co., Idaho	7,200	7,200	" "
Total Under Construction		68,500		

The Company has interconnections, through transmission lines, with the systems of California-Pacific Utilities Company at Baker, Oregon; U S Bureau of Reclamation at Emmett, Barber, and Minidoka, all in Idaho; and Utah Power & Light Company at Blackfoot, Pocatello, and American Falls, also all in Idaho.

[fol. 27] 12. The following exhibits are hereby made a part of this application:

Exhibit A —Consisting of the following documents, as now filed with the Commission as Exhibit A in applicant's application for preliminary permit—Oxbow development (Project No. 1971):
Articles of Incorporation, with amendments to date.
By-laws, as amended to date.
Certificate of Organization.
Certificate of Good Standing—Idaho.

Exhibit B —Certified copy of resolution of Board of Directors authorizing filing of application.

Exhibit C-D-E —Statement pertaining to water rights.

Exhibit F —Statement pertaining to project lands.

Exhibit G —Statement of applicant's financial ability.

Exhibit H —Statement of project operation on stream flow.

Exhibit I —Statement of system capacity.

Exhibit J —General map of project area.

Exhibit K —Detail map of project area.

Exhibit L —General design drawings.

Exhibit M —General description and specifications of equipment.

Exhibit N —Estimate of project cost.

Exhibit O —Statement of time for constructing project works.

Exhibit P —Map of applicant's system.

[fol. 28] IN WITNESS WHEREOF the applicant has caused its name to be hereunto signed by C J Strike, its President, and its corporate seal to be hereto affixed by A C Inman, its Secretary, thereunto duly authorized, this 13th day of August, 1947.

IDAHO POWER COMPANY
By (Sgd) C. J. STRIKE
President.

(Corporate Seal)
Attest:

(Sgd) A. C. INMAN
Secretary.

Duly sworn to by C. J. Strike, jurat omitted in printing.

[fol. 29] BEFORE THE FEDERAL POWER COMMISSION

Project No. 1975—Idaho Sep 16 1947

Honorable C. A. Robins
Governor of Idaho
Boise, Idaho

My dear Governor Robins:

Pursuant to the provisions of Part I of the Federal Power Act, you are hereby notified that Idaho Power Company, of Boise, Idaho, has filed with this Commission an application for license for a proposed water-power project (No. 1975), which would be located on Snake River in Gooding and Twin Falls Counties, Idaho, and would affect public lands of the United States.

The proposed project, to be known as the Bliss project, would consist of a concrete dam in section 9, T. 6 S., R. 12 E., Boise meridian, creating a reservoir having maximum pool elevation of approximately 2,736 feet and extending upstream to the tailrace of the Lower Salmon power project (No. 457), a distance of about 10 miles; a powerhouse with installed capacity of about 134,000 horsepower in four units of equal size; a switchyard; two 138,000-volt tie lines connecting with the applicant's Hagerman Valley-Boise and Hagerman Valley-Caldwell transmission lines; and appurtenant works. The applicant proposes to distribute the energy generated through its interconnected system for public-utility purposes.

Any objection to this application or request for a hearing thereon, together with any briefs or other data of which consideration is desired, should be submitted to the Commission on or before November 4, 1947.

Very truly yours,

J. H. GUTRIDE
Acting Secretary

Registered
ARH:ejp
9-5-47

cc: Governor Robins
San Francisco Regional Office
Commissioner Draper
Bureau of Law
Licensed Projects Division
Mr. Hook

FACSIMILE

Project No. 1975 - Idaho

443310

SEP 26 1947

Honorable C. A. Robins
Governor of Idaho
Boise, Idaho

My dear Governor Robins:

Pursuant to the provisions of Part I of the Federal Power Act, you are hereby notified that Idaho Power Company, of Boise, Idaho, has filed with this Commission an application for license for a proposed water-power project (No. 1975), which would be located on Snake River in Gooding and Twin Falls Counties, Idaho, and would affect public lands of the United States.

The proposed project, to be known as the Milner project, would consist of a concrete dam in section 9, T. 6 S., R. 19 E., Boise meridian, creating a reservoir having maximum pool elevation of approximately 2,736 feet and extending upstream to the tailrace of the Lower Salmon power project (No. 457), a distance of about 10 miles; a powerhouse with installed capacity of about 134,000 horsepower in four units of equal size; a switchyard; two 138,000-volt tie lines connecting with the applicant's Hagerman Valley-Boise and Hagerman Valley-Caldwell transmission lines; and appurtenant works. The applicant proposes to distribute the energy generated through its interconnected system for public-utility purposes.

Any objection to this application or request for a hearing thereon, together with any briefs or other data of which consideration is desired, should be submitted to the Commission on or before November 4, 1947.

Very truly yours,

J. H. Gutride
Acting Secretary

Registered

AHG:cjp
9-5-47

cc: Governor Robins
San Francisco Regional Office
Commissioner Draper
Bureau of Law
Licensed Projects Division
Mrs. Hoak

[fol. 30] Project No. 1975—Idaho

Letter to Honorable C. A. Robins, Governor of Idaho
Identical letters sent to the following: (Registered)

Department of Reclamation—443311
State House
Boise, Idaho

Chairman, Board of County Commissioners—443312
Gooding County
Gooding, Idaho

Chairman, Board of County Commissioners—443313
Twin Falls County
Twin Falls, Idaho

The Mayor—443314
Gooding
Idaho

The Mayor—443315
Twin Falls
Idaho

Columbia Basin Commission, State of Washington—443316
Ephrata
Washington

Division of Water Resources—443317
Department of Conservation and Development
Olympia, Washington.

Hydroelectric Commission of Oregon—443318
Salem, Oregon

Department of Fish and Game—443319
State of Idaho
Boise, Idaho

[fol. 31] Before the Federal Power Commission

In the Matter of Idaho Power Company

Project No. 1975

September 19, 1947

Notice of Application for Major License

Public notice is hereby given, pursuant to the provisions of the Federal Power Act (16 U.S.C. 791-825r), that Idaho Power Company, of Boise, Idaho, has made application for license for pro-

posed major project No. 1975 (Bliss) on the Snake River, in Gooding and Twin Falls Counties, Idaho, consisting of a concrete dam in section 9, T. 6 S., R. 12 E., Boise meridian, creating a reservoir having maximum pool elevation of approximately 2,736 feet and extending upstream to the tailrace of the Lower Salmon power project (No. 457), a distance of about 10 miles; a powerhouse with installed capacity of about 134,000 horsepower in four units of equal size; a switchyard; two 138,000-volt tie lines connecting with the applicant's Hagerman Valley-Boise and Hagerman-Caldwell transmission lines; and appurtenant works.

Any protest against the approval of this application or request for hearing thereon, with the reasons for such protest or request and the name and address of the party or parties so protesting or requesting, should be submitted before November 4, 1947, to the Federal Power Commission, at Washington, D. C.

J. H. GUTRIDE
Acting Secretary.

This is certified to be a true copy of the original.

(S.) J. H. GUTRIDE

[fol. 32] BEFORE THE FEDERAL POWER COMMISSION

AMENDMENTS TO APPLICATION FOR LICENSE

Project No. 1975

Idaho Power Company, applicant for license for major project (No. 1975—Bliss, Idaho), amends and supplements its application for license, filed on August 22, 1947, in respect of Items 6, 7 (d) and 9, and Exhibits H, I, J, K, L, M, N and O, as hereinafter set forth:

6. A concise general description of the project and the principal project works is as follows:

The project, to be known as Bliss Power Plant, will include a dam across the Snake River, situated in the Northeast Quarter of the Southeast Quarter of Section 7, Township 6 South, Range 12 East, Boise Meridian, of a height sufficient to provide a top reservoir elevation of approximately 2654 [0] backing the water up to a point approximately one-fourth of a mile downstream from the Bliss bridge, or to a point near the east boundary of Section 12, Township 6 South, Range 12 East, Boise Meridian, a distance of about five miles. Three vertical water wheel drive units, of approximately 23,000-kw capacity each, will be installed with provision for a fourth unit which may be installed at a later date.

(a) Dams and Reservoirs—The dam will be of concrete with four 39′ x 34′ and one 10′ x 34′ spillway gates, or the equivalent, to handle surplus water flows during flood periods. The reservoir formed by the dam will be fluctuated approximately 4 feet to provide for daily fluctuations of load at a load factor of approximately 60 per cent. The operation of this reservoir will be coordinated with the operation of the reservoir at the Lower Salmon power development (Project 457).

(b) Water Conduits—No water conduits will be required except those necessary to bring the water from the forebay to the turbine scroll case through the seawall of the power plant.

(c) Power Houses, Substations, and Switchyards—The powerhouse will consist of a reinforced concrete structure supporting three semi-outdoor type generators. The gantry crane will be provided for assembling and dismantling of units. Step-up transformers will be mounted on the power plant structure. The switchyard will be erected on the bench land immediately above the powerhouse site.

(d) Transmission Lines—The plant will be connected by tap lines to the Company's 138-kv transmission network.

[0] Correction made 12/10/47

FACSIMILE

BEFORE THE

FEDERAL POWER COMMISSION

FPC-2 FORM

Amendments to

APPLICATION FOR LICENSE

Project No 1975

FEDERAL POWER COMMISSION
DOCKETED
DEC 3 1947
RECORDS SECTION
SECRETARY'S OFFICE

Dec. 3 7 11 12

Idaho Power Company, applicant for license for major project (No 1975 Bliss, Idaho), amends and supplements its application for license, filed on August 22, 1947, in respect of Items 6, 7 (d) and 9, and Exhibits H, I, J, K, L, M, N and O, as hereinafter set forth:

6. A concise general description of the project and the principal project works is as follows:

The project, to be known as Bliss Power Plant, will include a dam across the Snake River, situated in the Northeast Quarter of the Southeast Quarter of Section 7, Township 6 South, Range 12 East, Boise Meridian, of a height sufficient to provide a top reservoir elevation of approximately [redacted], backing the water up to a point approximately one-fourth of a mile downstream from the Bliss bridge, or to a point near the east boundary of Section 12, Township 6 South, Range 12 East, Boise Meridian, a distance of about five miles. Three vertical water wheel driven units, of approximately 23,000-kw capacity each, will be installed with provision for a fourth unit which may be installed at a later date

(a) Dams and Reservoirs - The dam will be of concrete with four 39' x 34' and one 10' x 34' spillway gates, or the equivalent, to handle surplus water flows during flood periods. The reservoir formed by the dam will be fluctuated approximately 4 feet to provide for daily fluctuations of load at a load factor of approximately 60 per cent. The operation of this reservoir will be coordinated with the operation of the reservoir at the Lower Salmon power development (Project 457)

(b) Water Conduits - No water conduits will be required except those necessary to bring the water from the forebay to the turbine scroll case through the seawall of the power plant.

(c) Power Houses, Substations, and Switchyards - The powerhouse will consist of a reinforced concrete structure supporting three semi-outdoor type generators. The gantry crane will be provided for assembling and dismantling of units. Step-up transformers will be mounted on the power plant structure. The switchyard will be erected on the bench land immediately above the powerhouse site.

(d) Transmission Lines - The plant will be connected by tap lines to the Company's 138-kv transmission network.

Changed to 7(d) per telephone conversation made 12/4/47

[fol. 38] 7. The location of the project applied for is as follows:

(d) In the region of the following named cities and towns: Approximately six miles westerly of the Village of Bliss, Idaho, between the cities of Glenns Ferry and Gooding, Idaho.

9. The proposed scheme of development for the project is as follows:

See Item 6 above. Concrete dam across Snake River with adjacent power plant structure housing three vertical water wheel driven generators, with approximately 23,000-kw capacity each, aggregating 69,000 kw of total installed capacity. Provision will be made for the future installation of a fourth unit. The power plant structure will form a portion of the dam across the Snake River channel. Water will be taken from the Snake River, passed immediately through the power plant and discharged again into the Snake River below the dam. Power available 90 per cent of the time is estimated at 35,500 kw, or 47,500 hp.

Applicant desires to begin construction of dam and powerhouse as soon as possible so that the power plant may be placed in service by autumn of 1949. Anticipated load increases are such as to make it essential that the plant be completed and in operation not later than the winter of 1949-50. Pre-license consent for immediate construction of project works is respectfully requested.

The following exhibits are filed herewith and hereby made a part of said application for license, Project 1975:

Exhibit H (amended)	—Statement of project operation on stream flow.
Exhibit I (amended)	—Statement of system capacity (geological statement and report attached).
Exhibit J (amended)	—General map of project area (Drawing No. E-7154).
Exhibit K	—Detail map of project area (Drawing No. E-7155, 3 sheets).
Exhibit L	—General design drawings (Drawing No. E-7156, 3 sheets).
Exhibit M (amended)	—General description and specifications of equipment.
Exhibit N (amended)	—Estimate of project cost.
Exhibit O (amended)	—Statement of time for constructing project works.

FACSIMILE



7 The location of the project applied for is as follows:

(d) In the region or the following named cities and towns: Approximately six miles westerly of the Village of Bliss, Idaho, between the cities of Glenns Ferry and Gooding, Idaho.

changed by ofpl. filed 8/20/29

9 The proposed scheme of development for the project is as follows:

See Item 6 above. Concrete dam across Snake River with adjacent power plant structure housing three vertical water wheel driven generators with approximately 23,000-kw capacity each, aggregating 69,000 kw of total installed capacity. Provision will be made for the future installation of a fourth unit. The power plant structure will form a portion of the dam across the Snake River channel. Water will be taken from the Snake River, passed immediately through the power plant and discharged again into the Snake River below the dam. Power available 90 per cent of the time is estimated at 35,500 kw, or 47,900 hp

Applicant desires to begin construction of dam and powerhouse as soon as possible so that the power plant may be placed in service by autumn of 1949. Anticipated load increases are such as to make it essential that the plant be completed and in operation not later than the winter of 1949-50. Pre-license consent for immediate construction of project works is respectfully requested.

The following exhibits are filed herewith and hereby made a part of said application for license, Project 1975:

Exhibit H (amended) - Statement of project operation on stream flow.

Exhibit I (amended) - Statement of system capacity (geological statement and report attached).

Exhibit J (amended) - General map of project area (Drawing No E-7154).

Exhibit K - Detail map of project area (Drawing No E-7155, 3 sheets)

Exhibit L - General design drawings (Drawing No E-7156, 3 sheets).

Exhibit M (amended) - General description and specifications of equipment

Exhibit N (amended) - Estimate of project cost

Exhibit O (amended) - Statement of time for constructing project works

[fol. 34] IN WITNESS WHEREOF, the applicant has caused its name to be hereunto signed by T E Roach, its Vice-President, and its corporate seal to be hereto affixed by A C Inman, its Secretary, thereunto duly authorized, this 17th day of November, 1947.

IDAHO POWER COMPANY
By (Sgd) T. E. ROACH
Vice-President

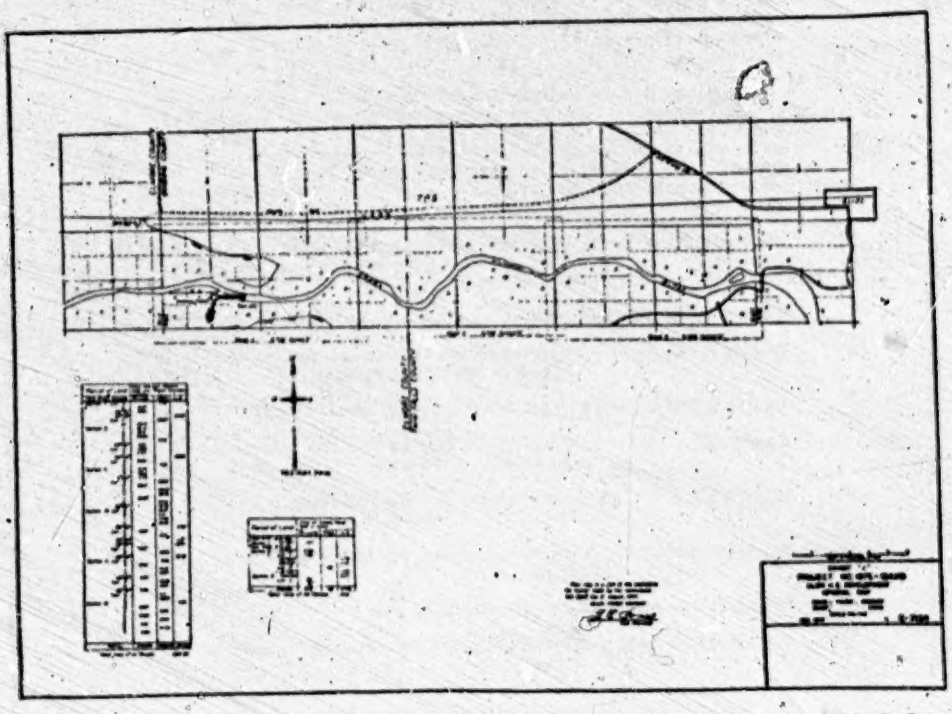
(Corporate Seal)
Attest:
(Sgd) A. C. INMAN
Secretary

Duly sworn to by T. E. Roach, jurat omitted in printing.

[fol. 35] EXHIBIT J TO APPLICATION
(amended)

GENERAL MAP OF PROJECT AREA

A general map (Drawing No E-7154) covering the entire project area is separately filed as a part of this application.



This statement is a part of the application for license filed by the undersigned on August 22, 1947.

IDAHO POWER COMPANY
By (Sgd) T. E. ROACH
Vice-President.

[fol. 37]

EXHIBIT N TO APPLICATION
(Amended)

ESTIMATE OF PROJECT COST

The following is an estimate of the cost of the proposed development as prepared by Company engineers. This estimate is subject to change as detailed designs are completed and equipment prices obtained.

Land and Land Rights	$ 75,000
Structures and Improvements	2,500,000
Reservoirs, Dam, and Waterways	4,075,000
Turbines and Generators	3,250,000
Accessory Electrical Equipment	200,000
Miscellaneous Power Plant Equipment	25,000
Roads, Trails, and Bridges	200,000
Transmission Substation Equipment	600,000
Communication Equipment	25,000
Engineering and Miscellaneous Overheads—15%	1,645,000
Total	$12,595,000

This statement is a part of the application for license filed by the undersigned on August 22, 1947.

Cameraman's Note:

This is poor copy, but is the best obtainable.

IDAHO POWER COMPANY
By (Sgd) T. E. ROACH
Vice-President.

[fol. 38] BEFORE THE FEDERAL POWER COMMISSION

Project No. 1975—Idaho

Dec 22 1947

The Honorable
The Secretary of the Interior
Washington, D. C.

Dear Sir:

Idaho Power Company, of Boise, Idaho, has filed with this Commission an application for a license for a proposed power project (No. 1975) on Snake River in Elmore, Twin Falls, and Gooding Counties, Idaho, affecting public lands of the United States.

The proposed project, to be known as the Bliss project, would consist of a concrete dam in lots 5 and 10, section 7, T. 6 S., R. 12 E., Boise meridian, creating a reservoir with maximum pool elevation of approximately 2,654 feet extending upstream about 5 miles to a point approximately one-fourth mile downstream from the Bliss bridge; a powerhouse integral with the dam with initial installation of approximately 69,000 kilowatts in three units and provision for future installation of a fourth unit; transformers; a switchyard; transmission lines connecting with the company's 138-kilovolt transmission system; and appurtenant works.

One copy of the incomplete application filed August 22, 1947, exclusive of Exhibit J, and one copy of the amendment filed December 3, 1947, including one print of each of the exhibits listed below, are inclosed:

Exhibit J (Revised) (F.P.C. No. 1975-2)

Exhibit K, Sheets, 1, 2, and 3 (F.P.C. Nos. 1975-3, 4, and 5)

Exhibit L, Sheet 1 (F.P.C. No. 1975-6)

In accordance with the provisions of section 4(e) of the Federal Power Act, you are invited to report whether the license, if issued,

would interfere or be inconsistent with the purpose for which any reservation under your supervision was created or acquired, and to state the conditions which are deemed necessary for the adequate protection and utilization of any such reservation.

It is requested that you give the Commission your views as to the measures which should be taken to protect wildlife resources in connection with the project in accordance with the provisions of Public Law 732, 79th Congress, 2d session, approved August 14, 1946. Your advice concerning fishways is also requested pursuant to the provisions of section 18 of the Federal Power Act, 16 U.S.C. 811.

You are also invited to report otherwise on the application to the extent that you may deem desirable.

If no response is received within 90 days from the date of this letter, it will be assumed that you do not desire to submit any comments.

Very truly yours,

J. H. GUTRIDE,
Acting Secretary

3 Inclosures:

No. 24484—Copy of application filed 8/22/47

No. 24485—Copy of amendment filed 12/3/47

No. 24486—Five prints

LP

ARH/ea & arh

12/15/47

cc: Secretary of the Interior
U. S. Geological Survey
Bureau of Reclamation
Fish and Wildlife Service
San Francisco Regional Office
Commissioner Draper
Bureau of Law
Division of Licensed Projects

FACSIMILE



Letter to The Secretary of the Interior Page 2

It is requested that you give the Commission your views as to the measures which should be taken to protect wildlife resources in connection with the project in accordance with the provisions of Public Law 732, 79th Congress, 2d session, approved August 14, 1946. Your advice concerning fisheries is also requested pursuant to the provisions of section 18 of the Federal Power Act, 16 U.S.C. 811.

You are also invited to report otherwise on the application to the extent that you may deem desirable.

If no response is received within 90 days from the date of this letter, it will be assumed that you do not desire to submit any comments.

Very truly yours,

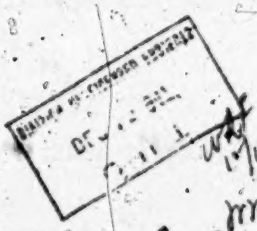
J. H. Gutride

Acting Secretary

3 Enclosures:
No. 2444 - Copy of application filed 8/22/47
No. 2445 - " " amendment " 12/3/47
No. 2446 - Five prints

LP
AEH/ss & enc
12/15/47

cc: Secretary of the Interior
U. S. Geological Survey
Bureau of Reclamation
Fish and Wildlife Service
San Francisco Regional Office
Commissioner Draper
Bureau of Law
Division of Licensed Projects



[fol. 40] BEFORE THE FEDERAL POWER COMMISSION

In the Matter of Idaho Power Company

Project No. 1975

December 26, 1947

NOTICE OF AMENDED APPLICATION FOR MAJOR LICENSE

Public notice is hereby given, pursuant to the provisions of the Federal Power Act (16 U.S.C. 791-825r), that Idaho Power Company, of Boise, Idaho, has amended its application for license for proposed major Project No. 1975 (Bliss). The project as now proposed will be located on the Snake River, in Elmore, Gooding, and Twin Falls Counties, Idaho, and will consist of a concrete dam in lots 5 and 10, section 7, T. 6 S., R. 12 E., Boise meridian (about 2 miles downstream from the site originally proposed), creating a reservoir with maximum pool elevation of approximately 2,654 feet extending upstream about 5 miles to a point approximately one-fourth mile downstream from the Bliss bridge; a powerhouse integral with the dam with initial installation of approximately 69,000 kilowatts in three units and provision for future installation of a fourth unit; transformers; a switchyard; transmission lines connecting with the company's 138-kilovolt transmission system; and appurtenant works.

Any protest against the approval of this application or request for hearing thereon, with the reasons for such protest or request and the name and address of the party or parties so protesting or requesting, should be submitted before January 29, 1948, to the Federal Power Commission, Washington 25, D. C.

J. H. GUTRIDE,
Acting Secretary.

This is certified to be a true copy of the original.
J. H. GUTRIDE

[fol. 41] Proj. No. 1975

EXHIBIT F
(Revised)

STATEMENT PERTAINING TO PROJECT LANDS

As to lands other than those owned by the United States necessary for carrying out the project covered by the application, applicant intends to obtain suitable easements, or occupancy or flood-

ing rights. Present information indicates ownerships of lands within the proposed project area are as shown on the following list:

IDAHO

									Owner-ship	
Lots 4 and 5	Sec	7	Twp	6	S	Rge	12	E	BM	US-PSR
Lots 6, 10 and NE¼SW¼ SE¼	"	7	"	6	S	"	12	E	"	Private
Lots 1, 2, 3, 4, 6 and 7	"	8	"	6	S	"	12	E	"	Private
Lots 5 and 8	"	8	"	6	S	"	12	E	"	US-PSR
Lots 1, 2, 3, 8 and SE¼ NW¼	"	9	"	6	S	"	12	E	"	Private
Lots 4, 5, 6, 7 and SE¼ SE¼	"	9	"	6	S	"	12	E	"	US-PSR
Lots 2 and 3	"	10	"	6	S	"	12	E	"	Private
Lots 1, 4, 5, 6, 7 and 8	"	10	"	6	S	"	12	E	"	US-PSR
S½SW¼SW¼SE¼ and NE¼SW¼	"	10	"	6	S	"	12	E	"	US-Vac'nt
Lot 7, NW¼SE¼ and NE¼SW¼	"	11	"	6	S	"	12	E	"	Private
Lots 1, 2, 3, 4, 5, 6 and 8	"	11	"	6	S	"	12	E	"	US-PSR
Lots 6, 7, 8 and 9	"	12	"	6	S	"	12	E	"	Private
Lots 2, 3 and 4	"	12	"	6	S	"	12	E	"	US-PSR
Lot 5	"	12	"	6	S	"	12	E	"	US-Vac'nt

This statement is a part of the application for license made by the undersigned on the 13th day of August, 1947.

IDAHO POWER COMPANY
By (Sgd) A. C. INMAN
Vice President

[fol. 42] BEFORE THE FEDERAL POWER COMMISSION

UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY

WASHINGTON 25, D. C.

Feb 19 1948

My dear Mr. Smith:

Reference is made to your letter of December 22, 1947, requesting a report in connection with the application of the Idaho Power Company of Boise, Idaho, for a license for a proposed power project (No. 1975-Idaho) on Snake River in Elmore, Twin Falls, and Gooding Counties, Idaho, and affecting public lands of the United States.

The recommendations of the Department as to measures which should be taken to protect fish and wildlife resources can not be made pending a report from the Fish and Wildlife Service. This

report is expected to be completed by about March 22, 1948, at which time you will be advised thereof.

In view of your request, however, that the report on this application be expedited, I am submitting the views of the Department on features other than fish and wildlife resources

The Geological Survey reports that the construction and use of the project would not affect adversely the purposes of any withdrawal or classification recommended by the Survey, deposits of coal or other minerals, or land within the known geologic structure of a producing oil or gas field, and that the land affected by the application does not contain substantial deposits of fissionable materials as defined in Executive Order 9701.

Possible stream gaging requirements indicated by the nature of the project are under consideration by the Geological Survey and will be attended to by direct communication with the Federal Power Commission.

The National Park Service advises that issuance of the proposed license will not interfere or be inconsistent with the interests of the National Park Service. Likewise, the Bonneville Power Administration advises that it will interpose no objection to the granting of the license.

The Bureau of Reclamation and other agencies in the Department have considered the proposed project in the light of irrigation and conservation programs and are of the opinion that possible conflicts may develop. However, because of the acute power shortage in southern Idaho, decision has been reached not to oppose the granting of this license since it is recognized that the project, if constructed promptly, would relieve the power shortage in the southern Idaho area.

It is felt, however, that if the Federal Power Commission issues a license for the project, the following provisions should be included therein:

(1) That the license be conditioned upon the applicant's starting construction work within one year from the date of issue of the license and upon completing construction of at least the initial [fol. 43] generating unit together with the necessary transmission lines and appurtenant works within five years of the date of the license.

(2) That, should the applicant determine it is damaged by subsequent upstream diversion of water by the United States in connection with its irrigation and conservation program, then the

United States Government has the option, in full settlement of any and all claims by the applicant,

(a) of paying such damages as the applicant shall be then entitled to recover as a matter of law; or

(b) of acquiring the applicant's plant at its depreciated cost.

The Department has no objection to the issuance of a license to the Idaho Power Company for its proposed Bliss Project, provided the recommendations above set forth are followed and provided further that full provision is made for the carrying out of the recommendations of the Fish and Wildlife Service which will be sent you at a later date.

Sincerely yours,

WILLIAM G. WARNER
Assistant Secretary of the Interior.

Hon. Nelson L. Smith,
Chairman, Federal Power Commission.

[fol. 44] BEFORE THE FEDERAL POWER COMMISSION

Before Commissioners: Nelson Lee Smith, Chairman; Claude L. Draper, Leland Olds and Harrington Wimberly.

March 2, 1948

In the Matter of Idaho Power Company

Project No. 1975

ORDER AUTHORIZING ISSUANCE OF LICENSE (MAJOR)

(1) An application was filed August 22, 1947, and later amended, by Idaho Power Company, of Boise, Idaho, for license under the Federal Power Act to authorize the construction, operation, and maintenance of a proposed major project, to be known as the Bliss development and designated as Project No. 1975, on the Snake River, in Elmore, Gooding, and Twin Falls Counties, Idaho, and affecting lands of the United States.

(2) The project consists of a concrete dam in lots 5 and 10, sec. 7, T. 6 S., R. 12 E., Boise meridian, creating a reservoir with maximum pool elevation of approximately 2,654 feet extending upstream about 5 miles to a point approximately one-fourth mile downstream from the Bliss bridge; a powerhouse integral with the dam with initial installation of approximately 69,000 kilowatts in three units and provision for future installation of

a fourth unit; transformers; a switchyard; transmission lines connecting with applicant's 138-kilovolt transmission system; and appurtenant works; and, exclusive of transmission facilities, occupies approximately 509.7 acres of lands of the United States in Elmore, Gooding, and Twin Falls Counties, Idaho.

(3) Although the application states that the powerhouse will be connected by tap lines to applicant's 138-kilovolt transmission network, neither the tap lines nor the switching station from which they emanate are shown to be within the project boundary on the maps submitted as part of the application.

(4) The Office of the Chief of Engineers has stated orally that the Division Engineer of the Corps of Engineers has reported favorably on the application.

(5) The Assistant Secretary of the Interior, acting for the Secretary of the Interior, has reported favorably on the application, subject to the imposition of conditions hereinafter provided for.

(6) The Public Utilities Commission of the State of Idaho has reported that it has no objection to the application.

[fol. 45] (7) The Department of Fish and Game of the State of Idaho has reported that it has no objection to the project.

(8) By letters dated September 30, 1947, and January 2, 1948, the Office of the Hydroelectric Commission of Oregon informed the Commission that the notices of the filing of the original application and of the amended application, respectively, would be called to the attention of that Commission at its next meeting. No further comment has been received.

(9) It is desirable to reserve for determination at a later date the question of what transmission facilities should be included in the license as part of the complete project.

The Commission, having considered the application and the project record, *finds* that:

(10) The applicant is a corporation organized under the laws of the State of Maine and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(11) No conflicting application is before the Commission.

(12) Public notice has been given as required by the Federal Power Act.

(13) The project does not affect any Government dam, nor will the issuance of a license therefor as hereinafter provided affect the development of any water resources for public purposes which should be undertaken by the United States itself.

(14) The issuance of a license as hereinafter provided will not interfere or be inconsistent with the purposes of any reservation or withdrawal of public lands of the United States.

(15) Under present circumstances and conditions and upon the terms hereinafter imposed, the project is best adapted to a comprehensive plan for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes.

(16) The horsepower capacity hereinafter authorized to be installed in the project is 130,000 horsepower, and the energy generated thereby will be used for public-utility purposes.

(17) In accordance with Section 10(d) of the Act, the rate of return upon the net investment in the project and the proportion of surplus earnings to be paid into and held in amortization reserves are reasonable as hereinafter specified.

[fol. 46] (18) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it for the use, occupancy, and enjoyment of its lands (exclusive of those used for transmission line right-of-way, if any) is reasonable as hereinafter fixed and specified; and the annual charge for recompensing the United States for the use, occupancy, and enjoyment of its lands used for transmission-line right-of-way, if any, shall be hereafter determined.

(19) The statement filed as part of the application and designated as Exhibit M (Amended) conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

(20) The maps and plans filed as part of the application and designated as Exhibits J, K and L, respectively, need revision in regard to project area and design of structures, and Exhibit F filed as part of the application does not give full details as to the project lands.

(21) Exhibit F, statement of nature, extent, and ownership of land and land rights; Exhibit J, general map covering the entire project area; Exhibit K, detail map of project area;

and Exhibit L, general design drawings, should be revised in accordance with the Commission's rules and regulations, and filed as hereinafter provided.

It is *ordered* that:

(22) A license, effective as of the first day of the month in which it is executed, be issued to the applicant for a period of 50 years for the construction, operation, and maintenance of major Project No. 1975, subject to the provisions of the Federal Power Act, and the rules and regulations thereunder, and subject to approval by the Secretary of the Army and the Chief of Engineers of such plans of the project structures as may affect navigable capacity; provided that nothing in this order shall be construed as determining whether the Snake River is a navigable water of the United States at the site of the proposed project.

(23) The license contain the usual conditions and provisions for licenses issued under Section 4(e) of the Act for such projects and such conditions as may be prescribed hereafter in the interest of navigation, and the following special provisions:

(a) The Licensee shall commence construction of the project within one year from the date of issuance of the license and shall complete said construction for the operation of three generating units within three years from the date of issuance of the license.

[fol. 47] (b) At such time as the Commission may direct, provided that it is economically sound and in the public interest to do so, after notice and opportunity for hearing, the Licensee shall install the fourth generating unit.

(c) The Licensee shall file with the Commission, in accordance with the Commission's rules and regulations, revised Exhibit L before beginning construction of the project works shown thereon and revised Exhibits F, J, and K within one year from the date of issuance of the license for the Bliss development, including such transmission facilities which the Commission may determine to be properly a part of the project.

(d) The operation by the Licensee of the project works so far as such operation involves the use, storage, and discharge from storage of waters of the Snake River at this project, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the inter-

est of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

(e) Should the project works be damaged or the power output of the project be reduced by subsequent upstream diversion of the waters of the Snake River by the United States in connection with its irrigation and conservation program, then the United States has the option, in full settlement of any and all claims by the Licensee, of paying such damages as the Licensee shall be then entitled to recover as a matter of law, or of acquiring the Licensee's project as provided by the Federal Power Act.

(f) The Licensee shall construct, maintain and operate such fish protective devices and shall comply with such special conditions in the interest of fish life and wildlife resources as may be prescribed hereafter upon the recommendations of the Secretary of the Interior; and

(g) The Commission reserves the right to determine at a later date what transmission facilities should be included in the license as part of the project.

[fol. 48] (24) The license provide that after the first 20 years of operation of the project under the license, six (6) per cent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings and for the establishment and maintenance of amortization reserves pursuant to Section 10(d) of the Act; one-half of all earnings in excess of six (6) per cent per annum shall be paid into such amortization reserves, and such amortization reserves shall be established, maintained, and disposed of in accordance with the terms of the Act and such rules, regulations, and orders of the Commission as may be adopted pursuant thereto.

(25) Subject to the provisions of Section 10(e) of the Act and the rules and regulations of the Commission thereunder, the licensee shall, effective as of the date of the license, pay to the United States the following annual charges:

(a) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent

per horsepower on the capacity authorized to be installed (130,000 horsepower) plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated by the project during the fiscal year ended June 30 of the calendar year for which the charge is made;

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands (exclusive of those used for transmission-line right-of-way, if any), $1,019.40; and

(c) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands used for transmission-line right-of-way, if any, an amount to be hereafter determined.

(26) Exhibit M (Amended) specified in paragraph (19) above be and it is hereby approved as part of the license.

By the Commission.

LEON M. FUQUAY,
Secretary.

Date of Issuance March 3, 1948

[fol. 49] BEFORE THE FEDERAL POWER COMMISSION

Project No. 1975—Idaho Mar 18 1948

The Director

Bureau of Land Management

Department of the Interior

Washington 25, D. C.

Dear Sir:

In accordance with the provisions of Section 24 of the Act of June 10, 1920 (41 Stat. 1063), as amended by the Act of August 26, 1935, (49 Stat. 838), notice is hereby given that the lands of the United States hereinafter described are entirely or partly included in the project boundary of Project No. 1975 for which application for license has been filed by the Idaho Power Company, Boise, Idaho. Under said Section 24 the lands are, from December 3, 1947 the date of filing of amended application first describing the lands, reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by Congress or

by the Commission. The area reserved by the filing of this application is approximately 509.73 acres.

Boise, Meridian, Idaho

T. 6 S., R. 12 E., Sec. 7, lots 4, 5;

Sec. 8, lots 5, 8;

Sec. 9, lots 4, 5, 6, 7, $SE\frac{1}{4}SE\frac{1}{4}$;

Sec. 10, lots 1, 4, 5, 6, 7, 8, $SW\frac{1}{4}SE\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$, $SW\frac{1}{4}SW\frac{1}{4}$;

Sec. 11, lots 1, 2, 3, 4, 5, 6, 8;

Sec. 12, lots 2, 3, 4, 5.

Also: All lands lying within 25 feet of the center line traverse of access road right-of-way in

T. 6 S., R. 12 E., Sec. 7, lot 4, $NW\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}NW\frac{1}{4}$;

Sec. 8, $SW\frac{1}{4}NW\frac{1}{4}$.

A photostatic copy of each of 4 sheets of the project map (FPC No. 1975-2, 3, 4 and 5) is transmitted herewith.

LP
MPD:ea
12-22-47

Very truly yours
LEON M. FUQUAY
Secretary

cc: Bureau of Land Management
San Francisco Regional Office
Bureau of Law
Division of Licensed Projects

Inclosures: 1 cc and Map (Incl. 24472) Bureau of Land Management

1 cc and Map (Incl. 24473) District Land Office, Blackfoot, Idaho

1 cc and Map (Incl. 24474) San Francisco Regional Office

2 cc and Map (Incl. 24475) Geological Survey

[fol. 50] BEFORE THE FEDERAL POWER COMMISSION

APPLICATION FOR SUPPLEMENTARY AMENDMENTS TO

APPLICATION FOR LICENSE

Project No. 1975

1. Idaho Power Company, a corporation organized under the laws of the State of Maine, and having its office and principal place of business at Boise, in the State of Idaho, filed with the Federal Power Commission, on August 22, 1947, an application for license under the Federal Power Act to authorize the construction, operation and maintenance of a proposed major project, to be known as the Bliss development and designated as Project No. 1975, on the Snake River in Elmore, Gooding and Twin Falls Counties, Idaho, and affecting lands of the United States.

2. On December 3, 1947, said applicant filed with said Commission an application for amendment to the above-mentioned application for license in respect of Items 6, 7(d) and 9, and Exhibits H, I, J, K, L, M, N and O thereof.

3. On March 2, 1948, the Federal Power Commission entered an Order responsive to both of aforesaid applications of Idaho Power Company, authorizing issuance of license (major) subject to certain terms and conditions as therein recited, among which was included Paragraph 23(g), reserving the right of said Commission "to determine at a later date what transmission facilities should be included in the license as part of the project".

4. Under "pre-license consent," for urgent reasons authorized by said Commission, applicant proceeded with certain construction work on the project, and during the progress thereof has given additional study to project details. Among the more important [fol. 51] features has been that of transmission facilities that should be included in license as a part of the project, as covered in said Paragraph 23(g) of the Commission's Order of March 2, 1948. As the formal license for Project No. 1975 has not been issued at date of this application, and because of the fact that the applicant has arrived at what it believes to be sound and reasonable conclusions as to project transmission facilities, it appears to the applicant desirable further to amend the application in order that the license, when issued, shall be as final and complete as it is possible to foresee. This application for amendment of application is therefore respectfully submitted.

5. Applicant hereby applies for the deletion of subparagraph (d)

of Paragraph numbered 6 of the aforesaid application filed December 3, 1947, and in place thereof to substitute the following:

(d) Transmission Lines—From the step-up of transformers and switchyard installed at the project power plant, as shown on revised Exhibit L hereof, two transmission circuits of 138-kv capacity shall be projected. One of these shall extend northwestwards, a distance of approximately 73 miles, to a point of junction with applicant's presently existing primary transmission system at a substation located near the City of Boise, Idaho. The second of said lines shall extend eastward, a distance of approximately 116 miles, to a point of junction with applicant's presently existing primary transmission system at a substation located near the City of American Falls, Idaho. Said lines will be located on privately owned and public lands, all as shown on revised Exhibits J and K hereof. These two transmission lines shall be included in license as a part of Project No. 1975.

6. Applicant hereby applies for the deletion of subparagraph (d) of Paragraph numbered 7 of the aforesaid application filed December 3, 1947, and in place thereof to substitute the following:

(d) In the region of the following named cities and towns:

Dam and power plant—Approximately six miles westerly of the Village of Bliss, Idaho, between the cities of Glenns Ferry and Gooding; Idaho.

Bliss-Boise transmission line—Bliss, Glenns Ferry, Mountain Home and Boise.

Bliss-American Falls transmission line—Bliss, Hagerman, Wendell, Minidoka, American Falls.

[fol. 52] The following revised exhibits are filed herewith and hereby made a part of said application for license, Project No. 1975:

Exhibit J (amended)—General maps of project area
(Drawing No. E-7154 and
Drawing No. E-7154A, 2 sheets).

Exhibit K (amended)—Detail maps of project area
(Drawing No. E-7155; 3 sheets, and
Drawing No. E-7155A, 4 sheets).

Exhibit L (amended)—General design drawings
(Drawing No. E-7156, 3 sheets, and
Drawing No. E-7156A).

Exhibit M (amended)—General description and specifications of equipment

Exhibit N (amended)—Estimate of project cost.

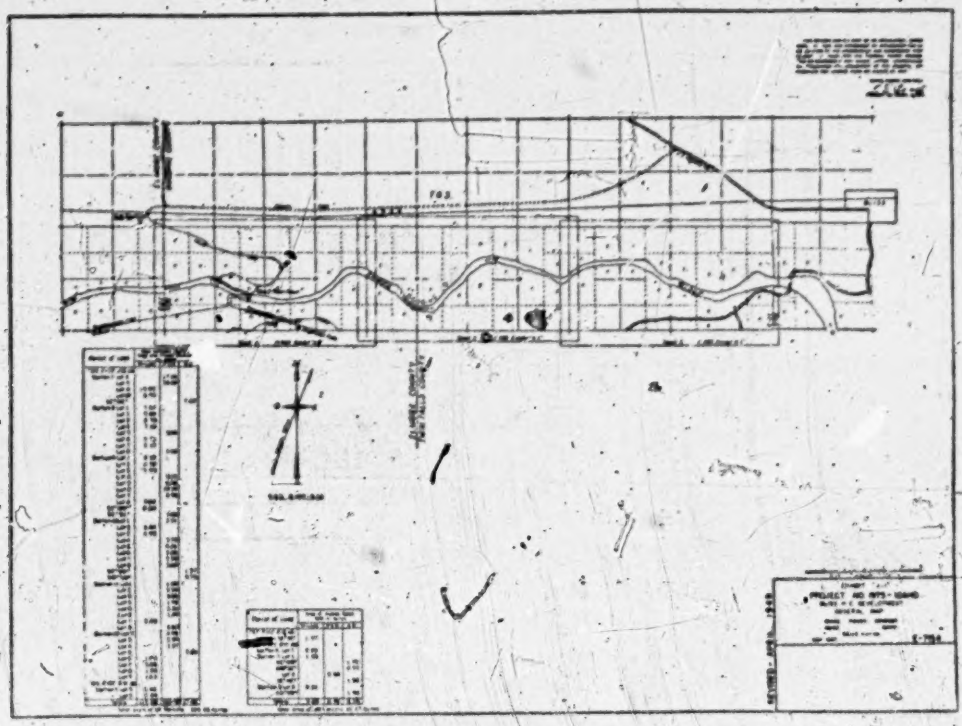
IN WITNESS WHEREOF, the applicant has caused its name to be hereunto signed by T. E. Roach, its President, and its corporate seal to be hereto affixed by E. A. Andersen, its Assistant Secretary, thereunto duly authorized this 15th day of April, 1949.

IDAHO POWER COMPANY
By (Sgd) T. E. ROACH
President

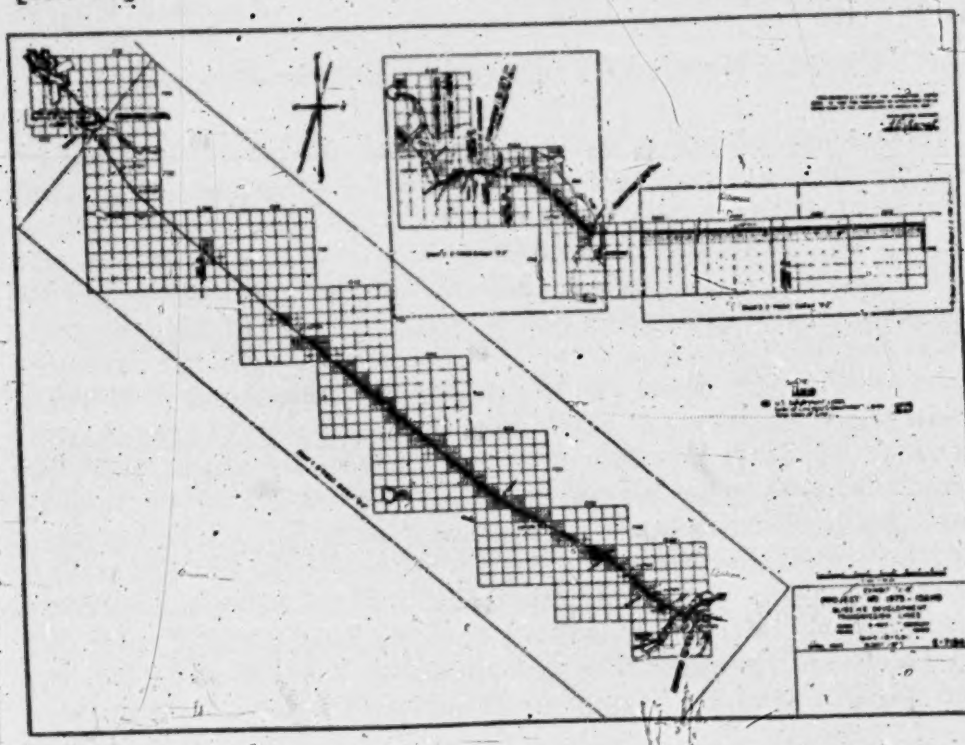
(Corporate Seal)
Attest: (Sgd.) E. A. ANDERSEN
Assistant Secretary.

Duly sworn to by T. E. Roach jurat omitted in printing.

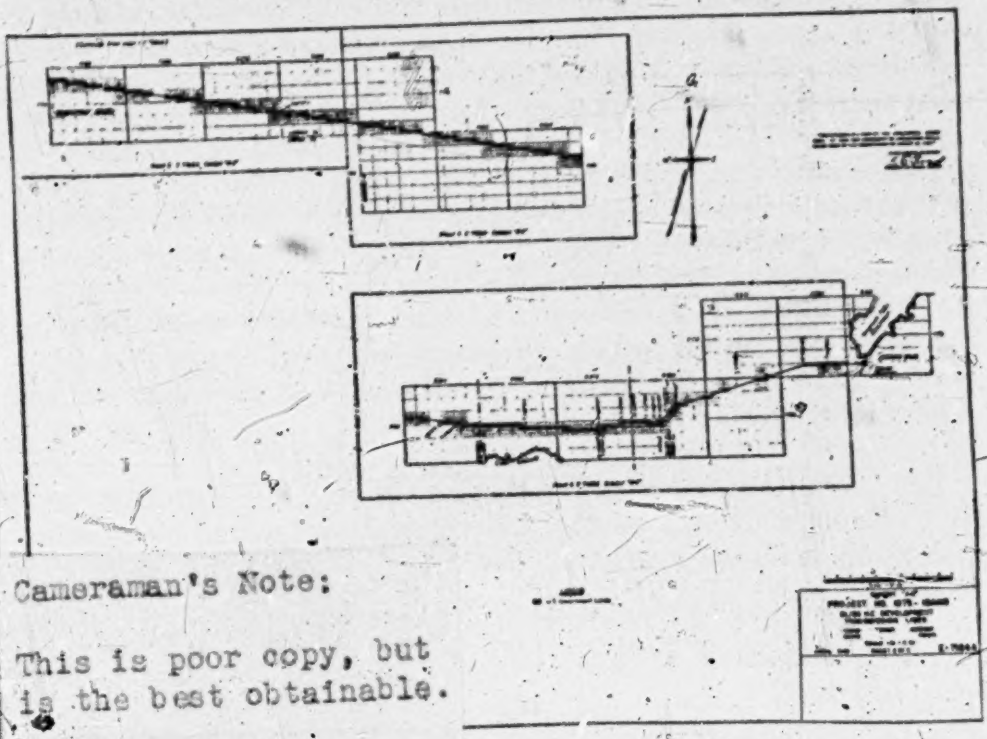
[fol. 53] EXHIBIT "J-1" TO APPLICATION



[fol. 54] EXHIBIT "J-2" TO APPLICATION



[fol. 55] EXHIBIT "J-2" TO APPLICATION



Cameraman's Note:

This is poor copy, but is the best obtainable.

[fol. 56] EXHIBIT M TO APPLICATION

Amended 4/15/49

GENERAL DESCRIPTION AND SPECIFICATIONS OF EQUIPMENT

The equipment proposed to be installed in this power plant includes three vertical water wheel driven electric generators, each having a capacity rating of about 23,000 kw, 25,000 kva, 3 phase, and designed for operating at 60 cycles, 13,800 volts. Turbines will have propeller-type runners. Individual 3-phase transformers, connecting to each generating unit of capacity equal to the generator, will step the voltage up from 13,800 to 138,000 volts for transmission. Each water wheel will be protected by trash racks. Headgates will provide a means of cutting off the water supply to each unit. One set of tailwater gates will serve all units for use in emptying draft tubes of water for mainfenance work. A gantry crane, suitable for handling all heavy parts of the installation, will be installed, with such smaller cranes as may be necessary for handling headgates, tailgates, and trash rack cleaner. Flood gates and spillway capacity will be provided suitable to safely handle 95,000 cubic feet per second of river flow. The maximum flow of record at the location of this site is approximately 47,200 cubic feet per second.

Transmission lines will consist of two 138-kv, 3-phase, single circuit, transmission lines, extending northwesterly from the power plant approximately 73 miles to Boise, and from the plant extending easterly approximately 116 miles to American Falls, Idaho. Lines will consist of 2-pole, H-frame towers, flat suspension type construction normally, with 3 and 4-pole towers at angle points and other special locations. Normal tower span will be 650 feet. Conductors will consist of three 715,500 CM ACSR. Two overhead ground wires will extend a distance of approximately one mile from each terminal substation, with arrangement for adding overhead ground wires throughout the entire length of the lines if experience dictates this to be desirable. All structures will be X-braced, and crossarms will be reinforced with K braces. Crossarm length will be 40 feet, providing 20-foot spacing between conductors. A ground wire will be installed on each pole.

This statement is a part of the application for license filed by the undersigned on August 22, 1947.

IDAHO POWER COMPANY
By (Sgd.) T. E. ROACH
President.

[fol. 57] EXHIBIT N TO APPLICATION
Amended 4/15/49

ESTIMATE OF PROJECT COST

The following is an estimate of the cost of the proposed development as prepared by Company engineers. This estimate is subject to change as detailed designs are completed and equipment prices obtained.

Land and Land Rights		$ 75,000
Structures and Improvements		2,500,000
Reservoirs, Dam, and Waterways		4,075,000
Turbines and Generators		3,250,000
Accessory Electrical Equipment		200,000
Miscellaneous Power Plant Equipment		25,000
Roads, Trails, and Bridges		200,000
Transmission Substation Equipment		600,000
Communication Equipment		25,000
Engineering and Miscellaneous Overheads—15%		1,650,000
		$12,600,000
138-kv Transmission Lines:		
Bliss-Boise	$1,600,000	
Bliss-American Falls	1,800,000	3,400,000
Total		$16,000,000

This statement is a part of the application for license filed by the undersigned on August 22, 1947

IDAHO POWER COMPANY,
By (Sgd) T. E. ROACH
President.

[fol. 58] BEFORE THE FEDERAL POWER COMMISSION

Project No. 1975—Idaho

Idaho Power Company
c/o Leighton and Gamble
1518 K Street, N.W.
Washington 5, D. C.

May 2 1949

Gentlemen:

Reference is made to your letter of April 26, 1949 requesting pre-license permission to commence construction of two 138-kilovolt transmission lines from the power plant of Project No. 1975 (Bliss) to Boise and to American Falls respectively, the two lines being covered in your application filed on April 20, 1949 seeking approval for their inclusion in the project.

You state that the need for energy at American Falls and vicinity is urgent and that you desire pre-license permission to commence construction immediately.

You are advised that pre-license construction of the two 138-kilovolt lines extending from your Bliss power-plant to Boise and to American Falls respectively, at your own risk, subject to the requirements of the agency or agencies having jurisdiction over the Government lands involved, will not prejudice consideration by the Commission of your application filed April 20, 1949 for inclusion of the lines in the project.

By direction of the Commission.

Very truly yours,
LEON M. FUQUAY
Secretary

LP
JTT:ea
4-28-49
cc: San Francisco Regional Office
Bureau of Law
Commissioner Draper
Division of Licensed Projects
Secretary of the Interior (2)

FACSIMILE

Project No. 1975-Idaho

MAY -2 1949

FEDERAL POWER COMMISSION
DOCKETED
MAY 2 1949
DOCKET SECTION
SECRETARY'S OFFICE

Idaho Power Company
c/o Leighton and Gamble
1518 K Street, N.W.
Washington 5, D. C.

Gentlemen:

Reference is made to your letter of April 26, 1949 requesting pre-license permission to commence construction of two 138-kilovolt transmission lines from the power plant of Project No. 1975 (Bliss) to Boise and to American Falls respectively, the two lines being covered in your application filed on April 20, 1949 seeking approval for their inclusion in the project.

You state that the need for energy at American Falls and vicinity is urgent and that your desire pre-license permission to commence construction immediately.

You are advised that pre-license construction of the two 138-kilovolt lines extending from your Bliss power plant to Boise and to American Falls respectively, at your own risk, subject to the requirements of the agency or agencies having jurisdiction over the Government lands involved, will not prejudice consideration by the Commission of your application filed April 20, 1949 for inclusion of the lines in the project.

By direction of the Commission.

Very truly yours,

Leon M. Fuquay

Secretary

LP
JTT:ea
4-28-49
cc: San Francisco Regional Office
Bureau of Law
Commissioner Draper
Division of Licensed Projects
Secretary of the Interior (2)

[fol. 59] BEFORE THE FEDERAL POWER COMMISSION

Project No. 1975—Idaho

The Honorable

The Secretary of the Interior

Washington 25, D. C.

Jul 29 1949

Dear Sir:

My letters dated February 19, 1948, and May 27, 1948, Assistant Secretary of the Interior William E. Warne reported on the application of Idaho Power Company for a license for the Bliss hydroelectric development (project No. 1975) on Snake River in Idaho. On March 2, 1948, the Commission adopted an order authorizing issuance of a license for the project.

The licensee has requested amendment of its application to include 138-kilovolt transmission circuits extending from the Bliss plant to substations near Boise, Idaho, and American Falls, Idaho, distances of approximately 73 miles and 116 miles, respectively. The lines would be located in Elmore, Ada, Twin Falls, Gooding, Jerome, Lincoln, Minidoka, Elaine, and Power Counties, Idaho, and would cross public lands of the United States.

The applicant was informed by letter dated May 2, 1949, copies of which were furnished your office, that pre-license construction of the two 138-kilovolt lines at its own risk, subject to the requirements of the agency or agencies having jurisdiction over the Government lands involved, would not prejudice consideration by the Commission of its application for inclusion of the lines in the project.

A copy of the applica on received April 20, 1949, is enclosed. That application was amended and supplemented by the filing on July 1, 1949, of revised Exhibits J-2 and K-2, a revised Exhibit F, and an additional exhibit designated as Exhibit P. The sheets which have been superseded have been so marked on the reduced sheets included in the attached copy of the application, and the Federal Power Commission numbers which have been assigned to those not superseded have been placed on the remaining sheets. A complete set of prints of the maps and drawings which now form a part of the application filed April 20 as later amended is being sent to you under separate cover. These are designated as follows:

[fol. 60] Letter to The Secretary of the Interior

Exhibit J-1	(F.P.C. No. 1975-13)
Exhibit J-2, Sheets 1 and 2	(F.P.C. Nos. 1975-24 and 25)
Exhibit K-1, Sheets 1, 2, and 3	(F.P.C. Nos. 1975-16, 17, and 18)
Exhibit K-2, Sheets 1, 2, 3, and 4	(F.P.C. Nos. 1975-26, 27, 28, and 29)
Exhibit L-2	(F.P.C. No. 1975-23)
Exhibit P	(F.P.C. No. 1975-30)

A print of revised Exhibit L, Sheet 1 (F.P.C. No. 1975-9), filed May 25, 1948, superseding Exhibit L, Sheet 1 (F.P.C. No. 1975-6), a print of which was transmitted to you with our letter of December 22, 1947, is also being sent to you under separate cover with the prints listed in the preceding paragraph.

In accordance with the provisions of section 4(e) of the Federal Power Act, you are invited to report whether modification of the Commission's order of March 2, 1948, to authorize inclusion in the license of the transmission lines as proposed in this application would interfere or be inconsistent with the purpose for which any reservation under your supervision was created or acquired, and to state the conditions, if any, in addition to those already recommended, which are deemed necessary for the adequate protection and utilization of any such reservation.

It will be appreciated if in this case you will submit your report within 30 days from the date of this letter so that the matter may be presented to the Commission promptly with a view to issuance of the license at an early date. If more than 30 days should be necessary, will you please so inform the Commission.

Very truly yours,

LEON M. FUQUAY

Secretary

3 Enclosures:

No. 66305—Copy of application filed 4/20/49

No. 66306—Copy of Exhibit F filed 7/1/49

No. 66307—13 prints (under separate cover)

LP
ARH:ea
7-15-49

cc: The Secretary of the Interior
San Francisco Regional Office
Division of Licensed Projects
Bureau of Law
Commissioner Draper

[fol. 61] BEFORE THE FEDERAL POWER COMMISSION

UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY

WASHINGTON 25, D. C.

Aug. 10 1949

My dear Mr. Smith:

This is in answer to the Commission's letter dated July 29 in which you inform us that on April 20, 1949, the Idaho Power Company has filed an application for an amendment to its license for *Project No. 1975* to include two 138 KV transmission lines extending from the Bliss plant to substations near Boise, Idaho, and American Falls, Idaho.

From the data transmitted, it appears that these lines would be built in part over public lands which are under the jurisdiction of the Department of the Interior. These public lands are listed in Appendix A, annexed hereto.

Your Commission will be interested in the following developments which took place before the Idaho Power Company filed its application on April 20, 1949:

1. On July 9, 1948, the Company applied to the Bureau of Land Management of the Department of the Interior for a permit to construct a transmission line over public lands in advance of a formal application for a right-of-way pursuant to the Department's rules and regulations.

2. The proposed transmission line was to be ultimately a 230 KV line and was to extend between Boise and American Falls, Idaho.

The right-of-way desired by the Company over the public lands would constitute more than half of the entire right-of-way for the said line. The total cost of the line, including 230 KV terminal facilities, was estimated at approximately $4,000,000. However, the Company proposed to operate this line initially at 138 KV and thus defer installation of the 230 KV terminal facilities.

3. The Department has, for some time, been vitally interested in and concerned with the supply of power in the southern part of the State of Idaho. The Federal Government has hydroelectric projects in the area, and other Federal projects are either under construction or have been authorized to be constructed. Prior to the time when the Idaho Power Company applied for a pre-construction permit to erect the transmission line over the public lands, the Bureau of Reclamation and the Bonneville Power Administration made and submitted a joint report entitled "Report on Availability of Power in Southern Idaho for Development of Phosphate Industry." In [fol. 62] this report the two agencies of the Department proposed that the United States construct, own, and operate a transmission line which would connect the eastern and western parts of the southern Idaho region. This report was transmitted to the Idaho Power Company with a request for a conference to explore the possibility of cooperative arrangements in order to supply power for potential phosphate producers as soon as possible.

4. Before any discussions took place, the Company requested a permit to construct the 230 KV line, referred to above, so that it, rather than the Federal Government, would own and operate this important tie-line. Extensive negotiations followed in which the representatives of the Department took the position that if the public lands of the United States were to be used by the Company for the construction of such an important part of the future power system of the region, the public interest required that the ownership and operation of this line by the Company should not interfere with the later development of federally owned power generating and marketing facilities; also, that there should not be any wasteful duplication of transmission facilities. Since the Company had not shown a present need for a 230 KV line, the Department proposed to grant a preconstruction permit and later a permit or easement for the necessary right-of-way subject, however, to the right of the Government to transmit its power over this line to the extent of its unused capacity, upon the payment of an equitable share of the operation and maintenance cost proportionate to the capacity used.

5. The transmission line for which the Company sought a permit from the Bureau of Land Management, whether regarded as one line from Boise to American Falls, or as two lines from Boise to

Hagerman and from Hagerman to American Falls, was intended as a trunk line, not as a project line.

(*a*) In submitting its data to the Division of Power of the Department of the Interior, in a letter dated August 6, 1948, the Company stated as follows:

> "This line will serve as a main transmission line, interconnecting the Boise-Caldwell area with the Pocatello area. It is expected to adequately serve this purpose in parallel with the existing 138 KV line for a period of 5 to 10 years, after which it is probable that a duplicate 230 KV line will be required. Its need in 1949 is due to the rapid growth of system load and to the phosphate furnace load contracted for in 1949 and 1950. Indications point to further growth of the phosphate load and to a continued growth of general business load."

[fol. 63] (*b*) In a letter dated August 13, 1948, the Company stated as follows with reference to the same line:

> "With the rapid load growth since the war and considering normal increase, anticipated in the next few years, plus the possible addition of a considerable amount of chemical load, we feel that it would be very shortsighted to construct a major trunk transmission line, not suitable for 230 KV operation."

(*c*) The Company also submitted a "Single Line Diagram", which is attached hereto as Appendix B. Examination of this diagram shows that the Company intended to place the power from its Bliss plant on its existing 138 KV bus at the Hagerman switchyard by means of a relatively short 138 KV transmission line. It is this short line connecting the Bliss plant with the Hagerman switchyard which can properly be regarded as part of the licensed project. Thus, it was proposed that the power generated at the Bliss plant would be put on the Company's system at Hagerman rather than at Boise and at American Falls.

(*d*) In order to firm up the transmission capacity of the system the Company also decided that a new 230 KV transmission line (to be initially operated at 138 KV) should be built from Boise to American Falls tying in with the Hagerman switchyard. The "Single-Line Diagram" shows that 42,000 KW of power would flow from the Hagerman switchyard to Boise over the existing 138 KV line and 45,000 KW over the new line. The "Single-Line Diagram" further shows that 30,000 KW of power would flow to American Falls over the existing 138 KV line and 25,000 KW over the new line. The division of power flow between these two lines would, of course, be determined by the loads which the Company

would impose on these lines and would not necessarily bear any definite relation to generation at licensed Project No. 1975.

(e) If it were intended to use the new line to transmit only the 69,000 KW available at the Bliss plant to the load centers, the proposed line would have no engineering feasibility and would be economically unsound, since it would have about twice the capacity of the Bliss plant when operated at 138 KV and over 4 times the capacity of the Bliss plant when operated at 230 KV.

6. Through all the negotiations, the Company resisted the conditions sought to be imposed, namely, that the unused capacity of the line be utilized by the Government for the transmission of its power upon payment of just compensation. On April 11, 1949, the Company withdrew its application for a permit or right-of-way for the reason (later stated by its representative in a letter to the Bureau of Land Management, dated May 27, 1949) that on March 2, 1948, the Federal Power Commission had issued a license for Project No. 1975 with a reservation, among others, that

[fol. 64] "The Commission reserves the right to determine at a later date what transmission facilities should be included in the license as a part of the project."

The withdrawal of the application from the Bureau of Land Management was followed up by the filing of the application to amend the license so as to include the two lines in question.

Upon examination of the maps and drawings which form part of the application, it appears that the transmission lines sought to be included in the project are not, properly speaking, project lines as defined in section 3(11) of the Federal Power Act, namely, "primary line or lines transmitting power therefrom (that is, from the project) to the point of junction * * * with an interconnected primary transmission system." The lines for which application was made are clearly intended to be an important part of the Company's transmission system itself, and constitute substantially the line for which the Company negotiated with this Department.

It is obvious that the application is wholly without merit, and that the Company's sole purpose was to invoke the regulatory jurisdiction of the Commission to oust temporarily the jurisdiction of the Secretary of the Interior until the line will have been constructed. Thus it figured to avoid the requirements of law that such transmission lines could be constructed on these public lands only after obtaining a permit or easement from the Secretary of the Interior.

Of course, the mere filing of an application would not accomplish

this result. Therefore, on April 26, 1949, the Company, by a letter to the Federal Power Commission, requested that it be granted pre-license permission to commence the construction of these lines. As your letter indicates, your Commission informed the Company on May 2, 1949, that "Pre-license construction of the two 138-Kilovolt lines at its own risk, subject to the requirements of the agency or agencies having jurisdiction over the Government lands involved, would not prejudice consideration by the Commission of its application for inclusion of the lines in the project."

We had no notice or opportunity to be heard on the request made by the Idaho Power Company for pre-license permission to construct the lines over the public lands. We recognize that we were not prejudiced by the Commission's action upon the Company's request, since permission, if indeed it was a permission, was granted subject to such requirements as might be imposed by the Department. Nevertheless, had we had notice, we might have been in a position to put at your disposal the facts above stated.

Upon close scrutiny, it appears that the Commission's action was [fol. 65] not even tantamount to a pre-license permission, because if the proposed lines do not constitute project lines within the meaning of section 3(11) of the Federal Power Act, and the application is denied, it is not the pre-license construction that would prejudice consideration of the application, but the requirements of the law itself.

The Company treated the Commission's letter dated May 2, 1949, as a pre-license permit and, without regard to the requirements of the Department and without authority of law, entered and trespassed upon the public lands and commenced to construct and is continuing to construct the transmission lines thereon. Obviously, the Company's concern is not to construct a project line, but to construct a trunk transmission line flouting the requirements of this Department. In this manner, the Company is using the Commission's letter as a vehicle for the construction of the lines in violation of the very conditions stated in that letter.

Upon our request, the Attorney General brought action against the Idaho Power Company to enjoin the trespass, and on August 8 the United States District Court for the District of Idaho granted a temporary restraining order.

In these circumstances, we request that the Idaho Power Company should be required, upon short notice, to appear and show cause

why its application dated April 20, 1949, should not be dismissed forthwith.

Sincerely yours,

J. A. KRUG
Secretary of the Interior.

Hon. Nelson Lee Smith
Chairman, Federal Power Commission
Washington 25, D. C.

Appendices mailed under separate cover.

[fol. 66] BEFORE THE FEDERAL POWER COMMISSION

Project No. 1975

Idaho Power Company
c/o Leighton and Gamble
1518 K Street, N. W.
Washington 5, D. C.

Aug 16 1949

Gentlemen:

It will be recalled that on April 20, 1949 an application was filed by the Idaho Power Company for amendment of the license with the Bliss plant on the Snake River, Project No. 1975, to authorize construction and operation as part of the project works, two 138-kilovolt transmission circuits from this plant to substations near Boise, Idaho, and American Falls, Idaho.

Under date of May 2, 1949, you were advised that pre-license construction of these lines, "at your own risk, subject to the requirements of the agency or agencies having jurisdiction over the Government lands involved, will not prejudice consideration by the Commission of your application filed April 20, 1949 for inclusion of the lines in the project.".

There is enclosed a copy of a letter from the Secretary of the Interior under date of August 10, 1949, with respect to these lines, together with a copy of our response of even date thereto. Your prompt attention to this matter and a full explanation of the situation is requested.

Very truly yours,

JOSEPH H. GUTRIDE
Acting Secretary

Enclosure No. 16458

FACSIMILE

[redacted]

Proj. No. 1975

AUG 16 1949

Idaho Power Company
c/o Leighton and Gamble
1518 K Street, N. W.
Washington 5, D. C.

Gentlemen:

It will be recalled that on April 20, 1949 an application was filed by the Idaho Power Company for amendment of the license with the Bliss plant on the Snake River, Project No. 1975, to authorize construction and operation as part of the project works, two 138-kilvolt transmission circuits from this plant to substations near Boise, Idaho, and American Falls, Idaho.

Under date of May 2, 1949, you were advised that pre-license construction of these lines, "at your own risk, subject to the requirements of the agency or agencies having jurisdiction over the Government lands involved, will not prejudice consideration by the Commission of your application filed April 20, 1949 for inclusion of the lines in the project."

There is enclosed a copy of a letter from the Secretary of the Interior under date of August 10, 1949, with respect to these lines, together with a copy of our response of even date thereto. Your prompt attention to this matter and a full explanation of the situation is requested.

Very truly yours,

Joseph H. Gutride
Acting Secretary

Enclosure No. 16458

SIGNED ORIGINAL MAILED
F.P.C. MAIL ROOM—4

[fol. 67] BEFORE THE FEDERAL POWER COMMISSION

Project No. 1975—Idaho

The Director,
Bureau of Land Management,
Department of the Interior
Washington 25, D. C.

Aug 24 1949

Dear Sir:

In accordance with the provisions of Section 24 of the Act of June 10, 1920 (41 Stat. 1063), as amended, notice is hereby given that the hereinafter described lands of the United States are included in power project No. 1975 for which amendatory application has been filed by the Idaho Power Company, Boise, Idaho. The lands are embraced in proposed transmission line rights-of-way and sites required for the location of guys and anchorages. The date of filing of the amendatory application and map for the transmission line right-of-way is April 20, 1949, which has been supplemented by revised map filed July 1, 1949 indicating the lands necessary for guy and anchorage purposes. Under said Section 24 these lands are, from the respective dates of filing of maps, reserved from entry, location or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress.

Boise meridian, Idaho.

All portions of the following described subdivisions lying within 40 feet of the center line survey of the transmission line right-of-way location, plus additional lands lying beyond the marginal limits thereof required for guy anchorages, as shown on revised map designated as "Exhibit K-2" and entitled "Project No. 1975-Idaho, Bliss H.E. Development, Transmission Detail Map, Idaho Power Company, Boise, Idaho," and filed in the office of the Federal Power Commission on July 1, 1949:

T. 2 N., R. 3 E., sec. 5, lot 4.

T. 1 N., R. 4 E., sec. 15, SW¼SW¼;
sec. 22, SE¼SE¼.

T. 1 S., R. 5 E., sec. 15, NW¼NW¼, SE¼NW¼, NW¼ SE¼, S½SE¼;
sec. 25, SW¼NE¼, N½SE¼, SE¼SE¼;
sec. 26, NE¼NE¼.

T. 1 S., R. 6 E., sec. 30, lot 4;
sec. 31, lot 1, SW¼NE¼, NE¼NW¼, NW¼ SE¼.

T. 2 S., R. 6 E., sec. 4, W½SW¼, SE¼SW¼;
sec. 5, lot 4, SW¼NE¼;
sec. 9, NW¼NE¼, S½NE¼, NE¼NW¼, NE¼SE¼;
sec. 10, NW¼SW¼, S½SW¼;
sec. 14, SW¼NW¼, SW¼SE¼, NE¼SW¼;
sec. 15, NW¼NE¼, S½NE¼, NE¼NW¼, NE¼SE¼;

[fol. 68]

sec. 23, N½NE¼, SE¼NE¼;
sec. 24, SW¼NW¼, SW¼SE¼, E½SW¼, NW¼SW¼;
sec. 25, N½NE¼, SE¼NE¼;

T. 2 S., R. 7 E., sec. 30, lots 2, 3, SE¼NW¼, NW¼SE¼, S½SE¼, E½SW¼;
sec. 31, NE¼NE¼;
sec. 32 NW¼NW¼, S½NW¼, NW¼SE¼, S½SE¼, NE¼SW¼.

T. 3 S., R. 7 E., sec. 3, SW¼SW¼;
sec. 4, lots 3, 4, S½NW¼, SW¼NE¼, N½SE¼, SE¼SE¼;
sec. 5, lot 1;
sec. 10, NW¼NW¼, E½SE¼;
sec. 11, SW¼SW¼;
sec. 13, W½SW¼, SE¼SW¼;
sec. 14, NW¼NE¼, S½NE¼, N½NW¼, SE¼NW¼, NE¼SE¼;
sec. 24, W½NE¼, SE¼NE¼ NE¼NW¼, NE¼SE¼.

T 3 S., R. 8 E., sec. 19, lots 3, 4, SW¼SE¼, E½SW¼;
sec. 29, SW¼NW¼, SW¼SE¼, N½SW¼, SE¼SW¼;
sec. 30, N½NE¼, SE¼NE¼, NE¼NW¼;
sec. 32, E½NE¼, NW¼NE¼;
sec. 33, S½NW¼, SE¼, NE¼SW¼;
sec. 34, SW¼SW¼.

T. 4 S., R. 8 E., sec. 1, SW¼SW¼;
sec. 2, SW¼NW¼, W½SE¼, SE¼SE¼, N½SW¼;
sec. 3, lots 2, 3, 4, S½NE¼.

T. 4 S., R. 9 E., sec. 7, SE¼SE¼;
sec. 17, SW¼NE¼, NW¼, N½SE¼;
sec. 18, NE¼NE¼;
sec. 21, NE¼NE¼;

sec. 22, SW¼NE¼, NW¼NW¼, S½ NW¼, E½SE¼, SW¼SE¼, NE¼SW¼;
sec. 23, S½SW¼;
sec. 25, W½SW¼, SE¼SW¼;
sec. 26, W½NE¼, SE¼NE¼, N½NW¼, NE¼SE¼.

T. 4 S., R. 10 E., sec. 31, lots 3, 4, SE¼SW¼.

T. 5 S., R. 10 E., sec. 5, W½SW¼, SE¼SW¼;
sec. 6, lots 2, 3, S½NE¼, NE¼SE¼.
sec. 8, N½NE¼, SE¼NE¼, NE¼NW¼.
sec. 9, SW¼NW¼, S½SE¼, N½SW¼, SE¼ SW¼;
sec. 14, lot 4;
sec. 15, NW¼NW¼, S½NE¼;
sec. 25, SE¼NE¼.

T. 5 S., R. 11 E., sec. 30, lots 2, 3, SW¼SE¼, E½SW¼;
sec. 31, NW¼NE¼.

T. 6 S., R. 11 E., sec. 10, SW¼SW¼;
sec. 14, lots 1, 3, NW¼NE¼;
sec. 15, lot 3.

[fol. 69]

T. 6 S., R. 12 E., sec. 8, lot 8;
sec. 13, W½SW¼, SE¼SW¼;
sec. 14, S½N½, NE¼SE¼;
sec. 15, NW¼, S½NE¼;
sec. 17, N½NE¼, NE¼NW¼.
sec. 24, NW¼NE¼, S½NE¼, NE¼NW¼, NE¼SE¼.

T. 6 S., R. 13 E., sec. 19, lots 3, 4, SE¼SW¼;
sec. 29, W½SW¼, SE¼SW¼;
sec. 30, NW¼NE¼, S½NE¼, NE¼NW¼, NE¼SE¼;
sec. 32, W½NE¼, SE¼NE¼, NE¼NW¼, NE¼SE¼;
sec. 33, W½SW¼, SE¼SW¼.

T. 7 S., R. 13 E., sec. 3, lots 3, 4, NW¼SE¼, S½SE¼, NE¼ SW¼;
sec. 10, lot 1;

T. 7 S., R. 14 E., sec. 9, NE¼NW¼;
sec. 10, N½N½.
sec. 11, N½N½;
sec. 12, N½N½.

T. 7 S., R. 15 E., sec. 7, lot 1, N½NE¼, NE¼NW¼;
sec. 8, N½N½;
sec. 9, N½N½;
sec. 10, N½N½;
sec. 11, N½N½;
sec. 12, N½N½.

T. 7 S., R. 16 E., sec. 7, lot 1, N½NE¼, NE¼NW¼;
sec. 8, N½N½;
sec. 9, N½N½;
sec. 10, N½N½;
sec. 11, N½N½;
sec. 12, N½N½.

T. 7 S., R. 17 E., sec. 7, lot 1, N½NE¼;
sec. 8, N½N½;
sec. 9, N½N½;
sec. 10, N½N½;
sec. 11, N½N½;
sec. 12, N½N½.

T. 7 S., R. 18 E., sec. 7, lot 1, N½NE¼, NE¼NW¼;
sec. 8, S½NE¼, E½NW¼, NW¼NW¼;
sec. 9, S½N½, NE¼SE¼;
sec. 10, N½S½.
sec. 11, NW¼SW¼, S½S½;
sec. 12, S½S½.

T. 7 S., R. 19 E., sec. 13, SW¼SE¼, S½SW¼;
sec. 14, NW¼SW¼, S½S½;
sec. 15, N½S½;
sec. 17, S½NE¼, NW¼;
sec. 18, lots 1, 2, N½NE¼, NE¼NW¼;
sec. 24, N½NE¼, NE¼NW¼.

[fol. 70]

T. 7 S., R. 20 E., sec. 19, lot 1, N½NE¼, NE¼NW¼;
sec. 20, NW¼NW¼, S½N½;
sec. 21, SW¼NE¼, S½NW¼, N½SE¼,
NE¼SW¼;
sec. 22, N½S½, SE¼SE¼;
sec. 23, S½S½;
sec. 24, S½SW¼;
sec. 25, N½NE¼, NE¼NW¼.

T. 7 S., R. 21 E., sec. 25, SW¼SW¼;
sec. 26, S½S½;
sec. 27, NW¼SE¼; S½SE¼, N½SW¼;

sec. 28, SW¼NW¼, N½S½;
sec. 29, S½N½;
sec. 30, N½N½, SE¼NE¼.

T. 7 S., R. 22 E., sec. 31, lot 1, S½NE¼, E½NW¼;
sec. 32, S½N½; NE¼SE¼;
sec. 33, N½S½;
sec. 34, S½SE¼; N½SW¼, SE¼SW¼;
sec. 35, S½S½.

T. 8 S., R. 22 E., sec. 1, lots 1, 2.

T. 8 S., R. 23 E., sec. 2, S½S½;
sec 3, W½SE¼, SE¼SE¼N½SW¼;
sec. 4, SW¼NW¼, N½S½;
sec. 5, S½N½;
sec. 6, lots 1, 2, 3, SE¼NE¼.
sec. 11, NE¼NE¼;
sec. 12, N½N½.

T. 8 S., R. 24 E., sec. 7, lot 1, S½NE¼, E½NW¼;
sec. 8, S½N½, NE¼SE¼;
sec. 9, N½S½;
sec. 10, NW¼SW¼, S½S½;
sec. 11, S½SW¼;
sec. 13, N½N½, SE¼NE¼;
sec. 14, N½NE¼, NE¼NW¼.

T. 8 S., R. 25 E, sec. 14, S½SW¼;
sec. 15, S½S½;
sec. 17, S½NW¼, N½S½;
sec. 18, lot 2, S½NE¼, SE¼NW¼;
sec. 23, N½NE¼, NE¼NW¼;
sec. 24, N½N½.

T. 8 S., R. 26 E., sec. 19, lot 1, N½NE¼;
sec. 20, N½N½;
sec. 21, N½N½;
sec. 22, S½NE¼, NW¼;
sec. 23, S½N½;
sec. 24, S½N½.

[fol. 71]

T. 8 S., R. 27 E., sec. 19, lot 2, S½NE¼, SE¼NW¼, N½SE¼;
sec. 20, N½S½;
sec. 21, N½S½;
sec. 22, NW¼SW¼, S½S½;
sec. 23, S½S½;
sec. 24, SW¼SE¼, S½SW¼;
sec. 25, N½NE¼, NE¼NW¼.

T. 8 S., R. 28 E., sec. 10, S½SE¼;
sec. 11, S½SW¼;
sec. 12, SE¼NE¼;
sec. 15, NW¼NE¼, E½NW¼, SW¼NW¼, NW¼SW¼;
sec. 19, S½SE¼, SE¼SW¼;
sec. 20, N½SE¼, E½SW¼, SW¼SW¼;
sec. 21, NW¼NE¼, E½NW¼, SW¼NW¼, N½SW¼;
sec. 30, lot 1, NE¼SW¼.

T. 7 S., R. 29 E., sec. 35, SE¼SE¼.

T. 8 S., R. 29 E., sec. 2, lots 1, 2, 3;
sec. 5, SW¼SE¼, SE¼SW¼;
sec. 7, lot 2, NW¼NE¼, SE¼NW¼;

T. 7 S., R. 30 E., sec. 34, N½NW¼;
sec. 35, N½NW¼.

The general determination made by the Commission at its meeting of April 17, 1922, with respect to lands reserved for power transmission line purposes only, is applicable to these lands. The area reserved by the filing of this application is approximately 1,240.93 acres.

A photostatic copy of each of seven sheets of the project map (FPC 1975—24-30, inclusive) is transmitted herewith.

Very truly yours,

J. H. GUTRIDE
Acting Secretary

Inclosure

1 cc and map (Inclosure 130311) to Bureau of Land Management

1 cc and map (Inclosure 130312) to Land of Survey Office, Federal Building, Boise, Idaho

1 cc and map (Inclosure 130313) to San Francisco Regional Office

3 cc and map (Inclosure 130314) to U.S. Geological Survey

Bureau of Law

Commissioner Draper

Division of Licensed Projects

LP

MPD/dec

8-10-49

[fol. 72] BEFORE THE FEDERAL POWER COMMISSION

IDAHO POWER COMPANY
BOISE, IDAHO

September 9, 1949

Federal Power Commission
Hurley-Wright Building
Washington 25, D. C.

Gentlemen:

This will acknowledge and thank you for the Commission's letter of August 16, 1949, transmitting copy of letter from the Secretary of the Interior to the Commission, and requesting a full explanation of the situation with respect to the construction of the transmission lines from the Bliss project (No. 1975) to Boise and American Falls, respectively, which are the subject of our application of April 20, 1949, filed with and now pending before the Commission. We are pleased to comply with such request, and appreciate the opportunity to respond in detail to the Secretary's communication.

With respect to paragraph 3 of the Secretary's letter, this Company has the full responsibility under state law and franchise obligations for supplying the power needs of its service area in southern Idaho, northern Nevada and eastern Oregon. For more than thirty years we have been serving this territory, and are charged by law with the duty of providing adequate and sufficient facilities to supply the electrical needs of the area which we serve. During all this period, Idaho Power Company has fulfilled this responsibility and met every demand for electrical service, including the rapidly increasing demands which have been imposed upon our system since the war. We are fully able and intend to continue to fulfill this responsibility. We believe it only appropriate to point out that during the winter of 1948-1949, the territory served by Idaho Power Company was practically the only area in the Pacific Northwest in which no power shortage existed at any time; and, further, that during this period the Company, through the Northwest Power Pool, exported a substantial supply of electricity to alleviate the critical conditions which existed in other Pacific Northwest areas.

For the Commission's information, it seems desirable at the outset to refer in sequence to certain significant errors in the Secretary's letter, because they convey impressions which would, if not corrected, intensify the build-up of alleged wrongful purpose which is imputed to this Company in the Secretary's communication.

With regard to the "Report on Availability of Power in Southern Idaho for Development of Phosphate Industry," referred to in paragraph 3 of the Secretary's letter, this report is dated April 12, 1948, and was transmitted to us by the Department of the Interior, Bureau of Reclamation, under date of May 26, 1948, following which a conference was promptly held with representatives of the Bureau on May 31, 1948. They were advised that we would be glad to meet again at any time, but no further conference was ever arranged.

As to the availability of power in southern Idaho for development of the phosphate industry, the Company, in December 1947, contracted to serve the electric furnace load of Food Machinery Corpo- [fol. 73] ration (Westvaco Division) in Pocatello. The contract calls for supplying of service for two electric furnaces, each of approximately 17,000-kw capacity, one of which is already in operation, the second unit being scheduled for operation early in 1950, with two additional furnaces contemplated for the future, making four units in all. It was partly in contemplation of this load that the Company, in the early summer of 1947, decided to provide additional transmission facilities, which, subsequently, became the subject of the Secretary's communication. In addition to the above furnace load, the Company is serving various other phosphate installations in the area, is in close touch with plans and programs of other potential producers, and is making preparation to supply all such future needs, as well as the important atomic reactor load, which only recently has become a material factor in the Company's eastern Idaho power supply program.

The implication in paragraph 4 of the letter, that the Company's decision to construct these additional transmission facilities was made as a result of the Department's announced transmission program, is completely negatived by the facts. As stated above, decision to construct the line was made early in the summer of 1947. Insulators were ordered on October 13, and conductor on October 14, 1947; crossarms were ordered on March 30, and poles on April 16, 1948, the latter two items not involving the delay then attendant in obtaining the insulators and conductor. The Company's printed annual report to its stockholders for 1947—dated February 2, 1948, but actually sent to the printer early in January,—shows the line on the map as it was then contemplated, and also contains a descriptive paragraph with reference thereto. On April 6, 1948, Mr. R. E. Gale appeared on behalf of the Company at the hearings held by the subcommittee of the Committee on Appropriations, House of Representatives, on the Interior Department Appropriation Bill for 1949, and presented a statement by the Company con-

taining a system map showing the line as then proposed; and reference to the line is also made in his testimony on page 1874, Part 3, of the printed record of the committee hearings.

When the Company decided to provide the transmission facilities then under consideration, it was entirely on the basis of our own requirements, and without any knowledge of the Department's projected intent. Survey for the line was begun several months before the report was issued on April 12, 1948. In June, a preliminary survey was completed, and on July 9, 1948, application for advance construction permit was filed, because of the urgent need for the new facilities in order to be able to carry our 1949-50 winter peak. Formal application for easement was filed in December 1948, as soon as the final survey was completed and maps and other necessary filing data could be prepared in accordance with the Department's regulations and requirements.

Because of material changes in its transmission plans, as a result of the decision to connect the Bliss plant directly into our main Boise substation to the west, and into the American Falls substation to the east, the Company concluded that the lines now under consideration are project lines within the meaning of the Federal Power Act. Accordingly, no action having been taken thereon, the Company subsequently withdrew its application to the Bureau of Land Management for easement under the Act of March 4, 1911, and on April 20, 1949, made application to the Federal Power Commission for inclusion of the Bliss-Boise and Bliss-American Falls 138-kv transmission lines as a part of the project facilities under Project 1975.

[fol. 74] It will be recalled that our original application for the Bliss license contained no details as to the transmission outlets from the plant, for the reason, as explained when the application was filed, that the Company had not completed its transmission studies in relation to the new project. The Commission, therefore, in its order of March 2, 1948, authorizing the Bliss license, reserved "the right to determine at a later date what transmission facilities should be included in the license as a part of the project."

At conferences with the staff concerning various details and questions which arose during the processing of our Bliss license application, the transmission situation was referred to. It is the writer's recollection that the matter of our pending application with the Department of the Interior was mentioned by the representatives of the Company. In this connection, the Commission's reservation of transmission line jurisdiction was called to our attention, and request was made that the Commission be supplied with detailed information, lacking in the original application, in reasonable time

so that the project transmission line matter could be determined by the Commission and the license for Project 1975 drafted in due course.

Contrary to the Secretary's statement in paragraph 5(a) of his letter, the capacity of the 138-kv line east to American Falls will be approximately 55,000 kw, and the line west to Boise will be approximately 75,000 kw. These capacities will barely care for the feeding of the Bliss plant output west during peak load conditions, and east during the valley of the west end load. The peaking capacity of the three units now being installed at Bliss will be at least 75,000 kw, and this will be further increased when the fourth unit is added, provision for which is included in the design. The only way in which the Secretary could have reached the conclusions expressed in paragraph 5(e) of his letter is on the assumption of equal simultaneous power flow each way from Bliss, which, of course, ignores the practical operating and loading conditions under which the facilities will operate. In fact, the 138-kv lines in question will have no more than adequate capacity to handle the east and west Bliss transmission requirements under the varying load conditions which must be met. The power flow figures on the single-line diagram mentioned in the Secretary's letter did not purport to show anything other than our estimates (of more than a year ago) for 1950, the first year in which the line will be in service. The Commission will recognize that the power business is not static; already those estimates have materially increased.

The Company believes that its conclusion that these lines are project lines under the provisions of sections 3(11) and 4(e) of the Federal Power Act is correct, and that our application for their inclusion in the license was properly and necessarily filed under the law and the Commission's specific reservation of jurisdiction in its order of March 2, 1948.

Coming now to the matter of the Company's application to the Commission for "pre-license permit" to commence construction of the Bliss outgoing lines, and the Commission's letter of May 2, 1949 in response thereto, we are enclosing herewith for your information copy of the Complaint, and of our Answer thereto, as filed in the action brought against us upon the request of the Department of the Interior, as stated in the Secretary's letter. In addition to the matters presented in the Company's Third Defense, in which the urgent need for the completion of these lines is shown, we respectfully call attention to the matters set forth in the Company's Second Defense, and particularly paragraphs 2, 3-d, and 6 thereof.

[fol. 75] It is our understanding that, under Sections 4(e) and 24 of the Federal Power Act, upon the filing of an application for

license, any and all public lands involved are reserved from entry, location, *or other disposal* until otherwise directed by the Commission, and that the Commission is the agency having jurisdiction with respect thereto.

It is understood, of course, that neither the Commission's letter of May 2, 1949, nor the many others that have preceded it in other cases involving this and other companies are permits according to the legal significance of that term, but they have commonly been called "pre-license permits" in the industry and in the Commission's staff ever since the Commission began to issue such authorizations, as a matter of practical necessity where facilities were urgently needed, some time prior to 1930. It is true that such "pre-license permits" issued since the practice was initiated by the Commission have specified that work performed thereunder would be at the owner's risk, and subject to the requirements of agencies *having jurisdiction* in each case. However, we have never interpreted such "pre-license permits" as requiring the obtainment of additional agency permission, as the Secretary's letter contends, where lands such as parks, Indian or military reservations, etc., were not involved, under immediate jurisdiction of some agency other than the Federal Power Commission. The fact is that during all the years past Idaho Power Company and many other companies in the West have not procured other agency permission so to occupy such lands of the United States, but have obtained agency consent where reservations, p rks, etc., were involved. It is our understanding that such practice was given approval by the Commissioner of the General Land Office at the outset of the "pre-license permit" issuance, and no one, so far as this Company can ascertain had, until the occurrence of the Bliss outgoing lines incident, been informed of any modification of the earlier advice given by the Commissioner of the General Land Office. Mr. M. O. Leighton, Consulting Engineer, of Washington, D. C., who has been the accredited Washington representative of Idaho Power Company since it commenced operations in 1916, is far more familiar with this situation than is the writer, and we believe that he could furnish an affidavit as to such practice and procedure over the years, should this be desired.

We therefore desire respectfully to submit our comments concerning what appears to be a fundamental aspect of the case with respect to the immediate jurisdiction over lands of the United States included within an application for license under the Federal Power Act. The first sentence of Section 24 of the Act reads as follows:

> "Any lands of the United States included in any proposed project under the provisions of this Part shall *from the date of filing of application* therefor be reserved from entry, location,

or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress."

It appears from the foregoing that the Federal Power Commission is the only agency of the United States having immediate jurisdiction over lands reserved from entry, location or other disposal included within any proposed project. During withdrawal of such public lands, as provided in said Section 24, neither the Director of the Bureau of Land Management nor the Secretary of the Interior is possessed of authority to make any disposition thereof, because such lands are reserved from entry, location, or *other disposal.* Reverting to the case of the Bliss outgoing lines, the public [fol.76] lands to be crossed by which were automatically placed in withdrawal on April 20, 1949, it does not appear that the Department of the Interior or the Bureau of Land Management has any authority to make disposition of them whether by patent, grant, easement or permit. It follows that, having no authority to make such disposition, they can have no authority to impose and enforce stipulations, conditions or requirements precedent to such disposition, or restricting and conditioning the disposition of such lands by others, and especially the Federal Power Commission. Their jurisdiction, if any, is subordinate to that of the Federal Power Commission until the time when the land withdrawal is cancelled or modified by direction of the Commission or by Congress.

Our contention in this respect is not based merely upon our own interpretation of the law. In a decision by Acting Secretary of the Interior Finney, appearing in volume 52 of the "Decisions of the Department of the Interior Relating to Public Lands" (52 I. D. 377), denying a rehearing of a departmental decision rejecting an application for reservoir and canal rights of way, the Acting Secretary said:

"The language of the law is clear and decisive. Under the first sentence of Section 24 the mere filing of an application for water-power privileges operates automatically to withdraw water-power sites from entry, location, or disposal under other laws 'until otherwise directed by the Commission or the Congress.' Section 29 of the Act repeals all acts or parts of acts inconsistent therewith. *It is clear beyond question that the jurisdiction of this department over any lands of the United States included in any proposed project under the provisions of said Act automatically terminated upon the filing of an application therefor with the Federal Power Commission, and this department has no further control of the lands until and unless jurisdiction is restored by the commission or by congress.*

"I see no such doubt or ambiguity in the language employed in the Act as to justify resort to other aids for construction. The statute is plain and decisive and affords its own interpretation."

Various other authorities can be cited in support of the Department's own decision on this proposition, including 32 Opinions of Attorney General 528; Minner v. Sadler (Cal), 139 P (2d) 356; United States v. Southern Power Co., 31 F (2d) 852.

Because of the Secretary's reference to our former application to the Bureau of Land Management, it seems appropriate to refer to certain of the proceedings had in connection therewith, even though it has long since been withdrawn and cannot be a factor in a subsequent and separate proceeding under the Federal Power Act, except as the Secretary has used it as a basis for imputing to Company wrongful motives and ulterior purposes. This application was filed on July 9, 1948. Although many previous similar applications with respect to necessary transmission facilities had been promptly granted, no action was taken on our application, and repeated inquiries resulted in no information as to its status, or of any reason for delay, until October 14, 1948.

On the latter date an advance construction permit was tendered the Company, accompanied by a written stipulation under which the Company would have been forced to agree, among other things, to concede use of the line to "any agency or instrumentality of the Federal Government" for transmission of electric power "in such amounts as will not unreasonably interfere with the Company's use of said line."

[fol. 77] No such requirement had previously been imposed or even mentioned over many years of obtainment of rights-of-way over government lands, and no reference to any such requirement was contained in the Department's regulations and required stipulations, pursuant to which the Company's application had been filed. Because of this unusual feature in the required stipulation with respect to so important a line, as well as other undesirable conditions applicable to our construction and use of the line, the Company objected thereto. Thereafter, conferences were had with representatives of the Department, and a revised stipulation was transmitted to the Company. In some respects this revision met certain of the Company's objections, but as to other features deemed essential by the Company, the newly tendered stipulation was regarded as hazardous as the original one.

It should be pointed out that the Company was at this time attempting to obtain only an advance construction permit, the justi-

fication and need for which was acknowledged by the Department. The stipulation sought to be imposed as the price therefor was in the nature of a written contract to agree to requirements which would apply to the formal easement later to be obtained, but which were not a part of the Department's standard regulations relating to the granting of rights-of-way under the Act of March 4, 1911, as set forth in 43 CFR, Part 245. Competent legal advice received by the Company was to the effect that such requirements were not "general regulations" authorized under said Act, and that the imposition thereof was without warrant in law.

Ultimately, an additional factor entered into the situation. The original stipulation tendered by the Department was in a letter from the Bureau of Land Management dated October 1, 1948. This letter, however, was not approved by the Acting Secretary of the Interior, and released, until October 14, 1948. On that same day, October 14, the Acting Secretary approved additional stipulations as a part of the Department's regulations, including paragraph (v) of Section 245.21, 43 CFR, Part 245, covering the same subject matter, but differing widely from the stipulations formerly tendered the Company. The new regulations finally appeared in the Federal Register eight days later, on October 22, 1948. Thus, stipulation (v) became a part of the Department's "general regulations" which, if warranted and authorized under the law, would apply uniformly to all easements thereafter granted under said Act of March 4, 1911.

It is apparent, from the above, that had the Company accepted either the original stipulation or the revised one tendered by the Department, and pursuant to such acceptance had proceeded to construct the line, neither of these stipulations could subsequently have been attached to the formal easement when issued, because it would then have been mandatory to insert said paragraph (v) of Section 245.21, 43 CFR Part 245. (See 58 I. D. 607.) Thus it is respectfully observed that on the very day that the Department tendered its original stipulation, it proceeded to render the same void by official promulgation of a so-called "general regulation" (not published until a week later) in essential conflict therewith.

On January 5, 1949, the Company filed with the Secretary of the Interior its request that stipulation (v) be waived in this particular instance. Such application and waiver are specifically authorized and provided for in paragraph 245.21 of the Department's regulations. However, the Company's application for waiver was not acknowledged nor, to our knowledge, acted upon in any way.

[fol. 78] With respect to our objections to the stipulations which were insisted upon by the Department, including said paragraph

(v) as approved October 14, 1948, we wish to point out that the Company's position has been justified by subsequent voluntary action of the Secretary of the Interior. In response to a petition filed by twelve of the larger electric utilities operating in the West, the Secretary courteously granted a hearing on said stipulation (v), before the Solicitor of the Department, which took place in Washington, D. C., on April 25, 1949. On June 15, 1949, the Solicitor submitted a memorandum to the Secretary frankly recognizing the merit of certain of the petitioners' contentions, as a result of which a new and revised stipulation (v) was promulgated by the Secretary on July 18, 1949. Although the new stipulation eliminated certain of the objectionable features of the original one, it introduced an entirely new concept and requirement, under which the Department may increase the capacity of the facilities involved, and thereafter have and retain in perpetuity the use of such capacity, regardless of the Company's original investment, and need for such capacity in supplying its own load requirements. However, we respectfully point out that the controversy over the old 230 KV line application, since withdrawn, which figures so largely in the Secretary's implication of wrongful motives on the part of the Company, was due to the attempted imposition of conditions and requirements which the Secretary has subsequently replaced, on the opinion and recommendation of his own counsel, with others far less objectionable as to the points which were then a controversy.

This is not to contend that the Federal Power Commission may not impose conditions, or require compliance with other agency requirements, in allowing pre-license construction. We respectfully submit, however, that neither the Department of the Interior, nor any agency thereof, has proper authority to require a prospective licensee under the Federal Power Act to procure from it a permit after application for license has been filed, as the price for permission to proceed while application for license is pending; nor to impose conditions which would bind the licensee over and above the license which it seeks to obtain, and which the Federal Power Act itself does not contemplate or authorize. In this case the Company was advised by the Bureau of Land Management that its permission to enter upon lands "under its jurisdiction" would be conditioned upon the requirements of 43 CFR Part 245. As stated above, and also in our answer to the complaint filed against us, the Company respectfully contends that the lands in question are not under the jurisdiction of said Department or Bureau by reason of the provisions of, and our license application pending under, the Federal Power Act, especially in view of Section 24 thereof; and that the imposition of the conditions contained in paragraphs (r), (v) and (x) of Section 245.21, 43 CFR Part 245, as amended, is unauthorized and unwarranted either under the Federal Power Act, the Act

of March 4, 1911, or any other act of or delegation of powers to the Department or Secretary of the Interior by Congress or otherwise.

For the Commission's information, in addition to the copy of complaint and answer in the suit filed against us, we are enclosing copy of the court's findings of fact, conclusions of law and order denying plaintiff's motion for temporary injunction, as on September 9, 1949, filed and entered by the court.

Very truly yours,
A. C. INMAN
Secretary

ACI:mb
Encl.

[fol. 79] BEFORE THE FEDERAL POWER COMMISSION

Proj. No. 1975
Idaho Power Company

Sep 28 1949

The Honorable
The Secretary of the Interior
Washington, D. C.

My dear Mr. Secretary:

Reference is made to the Commission's letter of September 19, 1949 transmitting a copy of a letter dated September 9, 1949 from Idaho Power Company to the Commission with respect to the above-entitled matter.

Inclosed is a copy of a letter dated September 23, 1949 from Mr. M. O. Leighton calling attention to an error in the September 9 letter and requesting that a correction be made in that letter.

If you plan to submit any suggested conditions for inclusion in a license amendment, if authorized, they should be submitted by October 3, 1949.

Sincerely yours,

NELSON LEE SMITH
Chairman

Inclosure No. 29615

Law—JCM:prf—9-27-49

CC: Idaho Power Company
c/o Mr. M. O. Leighton
Washington, D. C.

NLS—9/28/49
Signed Original Mailed
F.P.C. Mail Room—3

FACSIMILE

[redacted]

Proj. No. 1771
Idaho Power Company

SEP 28 1949

The Honorable
the Secretary of the Interior
Washington, D. C.

My dear Mr. Secretary:

Reference is made to the Commission's letter of September 19, 1949 transmitting a copy of a letter dated September 9, 1949 from Idaho Power Company to the Commission with respect to the above-entitled matter.

Inclosed is a copy of a letter dated September 23, 1949 from Mr. M. O. Leighton calling attention to an error in the September 9 letter and requesting that a correction be made in that letter.

If you plan to submit any suggested conditions for inclusion in a license amendment, if authorized, they should be submitted by October 3, 1949.

Sincerely yours,

Helen Lee Smith
Chairman

Inclosure No. 29615

Lee
:ccw:gf
9-27-49

cc: Idaho Power Company
c/o Mr. M. O. Leighton
Washington, D. C.

WWB

WLS 9/25/49

SIGNED ORIGINAL MAILED
MAIL ROOM

[fol. 80] BEFORE THE FEDERAL POWER COMMISSION

United States
Department of the Interior
Office of the Secretary
Washington 25, D. C.

My dear Mr. Smith: Oct 4 1949

This is in answer to the Commission's letters of September 19 and 28, 1949.

The first of these letters (dated September 19) transmitted a letter, dated September 9, 1949, from the Idaho Power Company and added that if there were any conditions which we desired to be incorporated in the amendment of the license for Project No. 1975, provided such amendment is authorized, our suggestions to that effect should be submitted.

The second letter (dated September 28) transmitted a correction of an error contained in the Company's letter of September 9 and added that if we planned to submit any suggestions as conditions to be included in the license amendment applied for, if authorized, such suggestions should be submitted by October 3, 1949.

In our letter to you dated August 10, 1949, we set forth the factual background which led to the trespass by the Idaho Power Company over the public lands involved in the Company's application and the suit filed by the Attorney General to enjoin said trespass. We charged that

(1) the Company was in contempt of the Department of the Interior in flouting its regulations, and was in contempt of the Commission in commencing the construction of the proposed lines in violation of the conditions set forth in the Commission's letter of May 2, 1949;

(2) the application for amendment of the license for Project No. 1975 was not filed in good faith, but in furtherance of the Company's purpose to construct the transmission lines in disregard of the Department's rules and regulations; and

(3) the transmission lines in question were not project lines within the meaning of section 3(11) of the Federal Power Act.

For these reasons we requested that an order be issued requiring the Idaho Power Company to show cause why its application should

not be dismissed. We find nothing in the Company's letter of September 9, as corrected, which should cause us to withdraw these charges.

It would appear that the questions we raised should be disposed of before we are asked to submit our suggestions for conditions to [fol. 81] be incorporated in the license amendment, on the theory that it might be authorized, especially since the matter involves an important question of orderly process of Government. In the action in the U. S. District Court for the District of Idaho, the Company claimed that it was an innocent bystander caught in a conflict between two Government agencies; whereas in truth and in fact, the Company created what has the earmarks of a conflict not intended by the applicable statutes.

Our letter of August 10 was in the nature of an informal complaint within the meaning of section 1.6 of the Commission's Rules and Regulations. This section provides:

> "Although the filing of an informal complaint is without prejudice to the complainant's right to file a formal complaint, only formal complaints submitted and prosecuted under this section will initiate formal proceedings or make complainant a party to any proceedings already initiated, and only formal complaints will be admitted in the record of formal proceedings."

Since it is our desire to be fully heard in this matter, we shall file our formal complaint as expeditiously as possible.

However, since it appears from your last letter that the Commission would like to have our suggestions as to the conditions to be incorporated in the license amendment, before it is decided whether the application should be dismissed for the reasons stated above, we are transmitting such suggestions with the understanding that this should not be taken as an abandonment of our position that the application should be dismissed.

Sincerely yours,

J. A. KRUG
Secretary of the Interior

Hon. Nelson L. Smith, Chairman
Federal Power Commission
Washington 25, D. C.

Enclosure

[fol. 82] BEFORE THE FEDERAL POWER COMMISSION

Project No. 1975—Idaho Power Company

Idaho Power Company
c/o Mr. M. O. Leighton
Consulting Engineer
1518 K St. N. W.
Washington 5, D. C.

Oct 5 1949

Dear. Mr. Leighton

There is transmitted herewith a copy of a letter dated October 4, 1949 from the Secretary of the Interior to the Chairman of the Commission relative to the application of Idaho Power Company for authority to include in the license as parts of Project No. 1975 (Bliss) two proposed transmission lines from the Company's Bliss plant to substations at Boise and American Falls, Idaho, respectively. In addition, the Secretary's letter transmitted certain conditions which the Secretary states should be incorporated in the license amendment, if authorized.

You are invited to submit any comments you may deem appropriate regarding the conditions recommended by the Secretary of the Interior for inclusion in the license if amendment is authorized. Such comments, if any, should be submitted without undue delay.

Very truly yours,

LEON M. FUQUAY
Secretary

Inclosure No. 28006
Law—JCM:szl—10/4/49

[fol. 83] BEFORE THE FEDERAL POWER COMMISSION

IDAHO POWER COMPANY
BOISE, IDAHO
October 5, 1949

Project No. 1975
Idaho Power Company

Federal Power Commission
Hurley-Wright Building
Washington 25, D. C.

Gentlemen:

Response is hereby respectfully made to the Commission's letter of October 5, 1949, inviting Idaho Power Company to submit

comments concerning recommendations made by the Secretary of the Interior, under date of October 4, with respect to conditions for inclusion in license for Project No. 1975, if amendment of said license to include primary transmisssion lines outgoing from Bliss plant be authorized by the Commission.

Concerning that portion of said letter from the Secretary of the Interior renewing charges of contemptuous conduct and bad faith, we again record respectful denial. We add that, even were the Secretary's strictures correct as to a former proceeding before the Department of the Interior, they may not in equity and justice pertain to a subsequent proceeding, in another Federal agency, under other laws, and where the applicant's practices have conformed to said laws. In this latter respect, we invite attention to the recent decision #2691 in the United States District Court for the District of Idaho, Southern Division.

Concerning the conditions suggested for inclusion in license amendment, if authorized, submitted as an appendix to the Secretary's letter of October 4, we beg leave to submit an overlying declaration. Idaho Power Company has in this case filed an application for amendment to an authorized license in strict conformity with the requirements of the Federal Power Act. Moreover, that application was filed in obedience to the intent of the Power Commission as expressed in its authorizing Order entered March 2, 1948, paragraph 23(g). As in many similar applications previously filed, the Company assumed and had good reason to expect that this most recently filed application for amendment would in all respects be appraised according to the terms of said act and the Commission's rules and regulations thereunder, and not according to the requirements of any other act nor according to the rules and regulations of any other Federal agency. Congress enacted the Federal Power Act, after more than 10 years of legislative proceedings, and included therein a body of maturely considered requirements and limitations. Idaho Power Company appeals to and rests its case on that act.

[fol. 84] It is respectfully urged that, with respect to the attributes of primary transmission lines outgoing from licensed power plants, the law defines such attributes and the Commission is the body authorized to appraise and approve or disapprove. We earnestly plead that the primary characteristics of such lines be not determined according to the grievances that may previously have arisen in connection with a case elsewhere. The Bliss lines, for the inclusion of which in license an application is pending, are projected solely to transmit "power therefrom (Bliss plant) to the point of junction with the distribution system or with the inter-

connected primary transmission system." (Sec. 3(11) Federal Power Act.) The projected Bliss lines do this and nothing else.

With respect to the agency of other Federal bodies arising from jurisdiction over "reservations", it is to be noted that Section 4(e) of the Federal Power Act provides that even when "reservations" are included in the Government lands covered by the application, the *Federal Power Commission* (and *not the Department of the Interior or any other agency*) *is the body having jurisdiction to decide whether the license would interfere or be inconsistent with the purpose for which said reservation was created.* Under Section 4(e) of the Act, the Federal Power Commission is "authorized and empowered" to issue licenses for projects "upon any part of the public lands *and reservations* of the United States." The only proviso is

> "That licenses shall be issued within any reservation only *after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created* or *acquired*, and shall be subject to *and contain such conditions as the Secretary of the Department under whose supervision* [as distinguished from "jurisdiction"] such reservation falls shall deem necessary *for the adequate protection and utilization of such reservation.*" (16 U.S.C., sec. 797(e)).

See Defendant's Brief, Civil No. 2691, United States of America vs. Idaho Power Company, U. S. District Court, Idaho, Southern District. It must be obvious that none of the conditions suggested for inclusion in the license for Project No. 1975 are confined to or even approach the purpose of "adequate protection and utilization" of any reservations that are to be crossed by the Bliss lines.

The following comments are tendered with respect to the specific conditions suggested by the Secretary of the Interior:

Concerning A: Again Idaho Power Company is constrained to appeal to the Federal Power Act. No such provision of license as condition A is provided for in that act. While the Company has a 30-year record of successful cooperation with government agencies in the wheeling of power and expects to do likewise in the future, [fol. 85] it must respectfully protest against Condition A as a requirement of license. Already even the threat of it has become noticeable in the Company's financial contacts.

Concerning B: Idaho Power Company respectfully objects to this condition for three reasons:

(1) It is merely a measure in retaliation. It attempts to provide inhibitions and limitations over the long future. If electric utility

service were static as are some other lines of endeavor, serious objections would not attach. Electric transmission concepts and necessities change rapidly, especially in the Idaho territory during the past two years. Two years hence it may be apparent that the requirements of B are wholly wrong.

(2) It is unnecessary. Should the Commission include these lines in the Bliss license, the structures and the functions so approved will be unalterable (F.P.A. Sec. 10(b)) without the Commission's approval, after the filing by the Licensee of an appropriate application for amendment of license. In the meantime, unauthorized alterations of the kind contemplated in B are subject to the penal section of the Power Act. Thus the Act and the Commission remain in control as contemplated by Congress.

(3) It is unlawful in the absence of mutual agreement. Section 6 of the Federal Power Act provides that licenses may be altered or surrendered only upon mutual agreement between the licensee and the Commission.

Very respectfully,

T. E. ROACH
President

[fol. 86] BEFORE THE FEDERAL POWER COMMISSION

Before Commissioners: Nelson Lee Smith, Chairman; Thomas C. Buchanan, Claude L. Draper and Harrington Wimberly.

October 13, 1949

In the Matter of Idaho Power Company

Project No. 1975

ORDER SUPERSEDING ORDER AUTHORIZING ISSUANCE OF LICENSE (MAJOR)

By order dated March 2, 1948, the Commission authorized issuance of a license under the Federal Power Act to Idaho Power Company to authorize construction, operation and maintenance of a proposed major project, to be known as the Bliss development and designated as Proj. No. 1975, on the Snake River in Elmore, Gooding, and Twin Falls Counties, Idaho. The project would occupy lands of the United States.

Although the application for license stated that the project powerhouse would be connected by tap lines to the company's 138-kilovolt transmission network, neither the tap lines nor the switching station from which they emanate were shown to be within the

project boundary on the maps submitted as part of the application for license. The Commission consequently reserved the right to determine at a later date what transmission facilities should be included in the license as part of the project. In addition the order authorized issuance of the license subject to approval by the Secretary of the Army and the Chief of Engineers of such plans of the project structures as may affect navigable capacity.

On April 20, 1949, the applicant filed an application amending and supplementing its original application for license for the project and on July 1, 1949, the last filed application was revised and supplemented. The April 20, 1949, application, as revised and supplemented, seeks to include within the project two proposed 138 kilovolt transmission lines extending from the Bliss plant (of Proj. No. 1975) to substations near Boise and American Falls. The lines would be located in Elmore, Ada, Twin Falls, Gooding, Jerome, Lincoln, Minidoka, Blaine, and Power Counties, Idaho, and would cross lands of the United States.

By letter dated April 26, 1949, the applicant called attention to the urgent need for additional power supply in the area which it serves, stated that immediate construction of the lines was necessary and requested that the Commission give its consent to immediate construction of the lines prior to the formal issuance of an order authorizing construction of the lines as part of Proj. No. 1975. On May 2, 1949, the Commission advised the applicant that pre-license construction of the two 138 kilovolt lines extending from the Bliss power plant to Boise and to American Falls, respectively, at the Applicant's risk, subject to the requirements of the agency or agencies having jurisdiction of the Government lands involved, would not prejudice consideration by the Commission of the application filed April 20, 1949, for inclusion of the lines in the project. After receipt of this letter, the company commenced construction of the lines. The Secretary of the Interior sought to enjoin construction but the United States District Court for the District of Idaho, Southern Division, dismissed the suit, holding the lands to be subject solely to the jurisdiction of the Commission upon the filing of the application covering the lines as provided by Sec. 24 of the Federal Power Act.

[fol. 87] One of the 138 kv lines extends northwesterly from the Bliss power plant a distance of approximately 73 miles, to a point of junction with the applicant's presently existing interconnected primary transmission system at a sub-station located near the city of Boise, and the second 138 kv line extends easterly from the Bliss plant a distance of approximately 116 miles to a point of junction with the applicant's presently existing interconnected primary

transmission system at a substation located near the city of American Falls. According to the application, the two transmission lines will operate at 138 kv, they will not connect to other electric generating plants between Boise and American Falls, and the Bliss plant will not be connected to other transmission lines now in operation in the vicinity of the plant. The lines will be directly connected to the Bliss plant and will carry energy generated at that plant to the aforesaid Boise and American Falls substations. Neither line alone is capable of transmitting the entire output of the Bliss plant and consequently both must be used to transmit power away from the plant.

The two transmission lines referred to, the applicant shows, are to be so constructed that they can without difficulty be converted for operation at 230 kilovolts, although initially they are to be operated at 138 kilovolts. They will cross lands of the United States for a distance of 125.647 miles. The right-of-way over 1.610 miles will be 200 feet in width and the remainder of right-of-way on Government land will be 80 feet in width. The equivalent mileage for a 100-foot right-of-way over lands of the United States for which charges may be assessed will be 102.45 miles.

In order to permit construction of the project at the earliest possible date, the Commission authorized the issuance of the license on March 2, 1948 without having formal approval by the Chief of Engineers of the project plans and prior to the submission by the applicant of plans for the necessary transmission facilities. The applicant proceeded with construction of the power plant which it has practically completed so that within a relatively short time the first three units will be ready for operation.

The Chief of Engineers and the Secretary of the Army have now approved the plans for those project structures affecting navigation and have recommended for inclusion in the license certain conditions in the interest of navigation as hereinafter provided.

[fol. 88] The Secretary of the Interior has requested the inclusion of certain conditions relating to the use of transmission lines, the substance of which is incorporated in the following order relating to those lines.

The Public Utilities Commission and the Department of Fish and Game of the State of Idaho have reported that they have no objection to the project.

The Hydroelectric Commission of Oregon reported that the matter would be considered, but has not submitted any further comment.

Under these circumstances it is appropriate to supersede the order of March 2, 1948 by a complete new authorization covering all of the facilities proposed to be constructed at this time so that the license instrument may issue without delay and the applicant may know what its rights will be under the license authorization.

Construction of the principal project facilities was commenced in the spring of 1948. Consequently, the effective date of the license should be March 1, 1948 rather than the date previously authorized.

The project consists of a concrete dam in lots 5 and 10, Sec. 7, T.6 S., R. 12 E., Boise Meridian, creating a reservoir with a maximum pool elevation of approximately 2,654 feet extending upstream about 5 miles to a point approximately one-fourth mile downstream from the Bliss bridge; a powerhouse integral with the dam with initial installation of approximately 69,000 kilowatts in three units and provision for future installation of a fourth unit; transformers; a switchyard; a transmission line extending from the Bliss plant approximately 73 miles to a substation located near the city of Boise and a second transmission line extending from the plant approximately 116 miles to a substation located near the city of American Falls; and, exclusive of transmission facilities, occupies approximately 509.7 acres of lands of the United States in Elmore, Gooding, and Twin Falls Counties, Idaho.

The Commission *finds:*

(1) The applicant is a corporation organized under the laws of the State of Maine and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(2) No conflicting application is before the Commission.

(3) Public notice has been given as required by the Federal Power Act

[fol. 89] (4) The project does not affect any Government dam, nor will the issuance of a license therefor as hereinafter provided affect the development of any water resources for public purposes which should be undertaken by the United States itself.

(5) The issuance of a license as hereinafter provided will not interfere or be inconsistent with the purposes of any reservation or withdrawal of public lands of the United States.

(6) Under present circumstances and conditions and upon the terms hereinafter imposed, the project is best adapted to

a comprehensive plan for the improvement and utilization of water power development and for other beneficial public uses, including recreational purposes.

(7) The horsepower capacity hereinafter authorized to be installed in the project is 130,000 horsepower, and the energy generated thereby will be used for public utility purposes.

(8) In accordance with Sec. 10(d) of the Act, the rate of return upon the net investment in the project and the proportion of surplus earnings to be paid into and held in amortization reserves are reasonable as hereinafter specified.

(9) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it for the use, occupancy, and enjoyment of its lands used for transmission-line right-of-way is reasonable as hereinafter fixed and specified; and the annual charge for recompensing the United States for the use, occupancy, and enjoyment of its lands (exclusive of those used for transmission line right-of-way) shall be hereafter determined.

(10) The maps, plans, and statements filed as part of the application and designated as Exhibit "J-1" (FPC No. 1975-13) excepting the tables of project area, Exhibit "J-2" (FPC Nos. 1975-24 and -25), Exhibit "K-2" (FPC Nos. 1975-26, -27, -28, and -29), Exhibit L (FPC Nos. 1975-9, -10, -11, and -12), Exhibit "L-2" (FPC No. 1975-23), and Exhibit M amended April 15, 1949, respectively, conform to the Commission's rules and regulations and should be approved as part of the license for the project.

(11) The maps filed as part of the application and designated as Exhibit "K-1" (FPC Nos. 1975-16, -17, and -18) do not show the project boundary around the reservoir lands by a metes-and-bounds survey. These maps and Exhibit F, statement of the nature, extent, and ownership of land and land rights, should be revised in accordance with the Commission's rules and regulations, and filed as hereinafter provided.

[fol. 90] (12) The aforesaid transmission lines leading from the Bliss plant to substations near American Falls and Boise are primary lines and are essential parts of the project as defined in Sec. 3(11) of the Federal Power Act,

and therefore are subject to the licensing authority of the Commission.

The Commission *orders:*

(A) A license effective as of March 1, 1948, shall be issued to the applicant for a period of fifty years for the construction, operation, and maintenance of major Project No. 1975 subject to the provisions of the Federal Power Act and the rules and regulations thereunder.

(B) The license shall contain the usual conditions and provisions for licenses issued under Sec. 4(e) of the Act for such projects and the following special provisions:

(1) The licensee shall commence construction of the project within four months from the effective date of the license and shall complete said construction for the operation of three generating units on or before July 1, 1950.

(2) At such time as the Commission may direct, provided that it is economically sound and in the public interest to do so, after notice and opportunity for hearing, the Licensee shall install the fourth generating unit.

[fol. 91] (3) upon completion of the project the licensee shall file with the Commission revised Exhibits F and K for the reservoir prepared in accordance with the Commission's rules and regulations.

(4) The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on Snake River; and the operations of the licensee so far as they affect the use, storage, and discharge from storage of waters affected by this license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary

of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

(5) The operation by the licensee of the project works so far as such operation involves the use, storage, and discharge from storage of waters of the Snake River at this project, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

(6) Should the project works be damaged or the power output of the project be reduced by subsequent upstream diversion of the waters of the Snake River by the United States in connection with its irrigation and conservation program, then the United States shall have the option, in full settlement of any and all claims by the licensee, of paying such damages as the licensee shall be then entitled to recover as a matter of law, or of acquiring the licensee's project as provided by the Federal Power Act.

[fol. 92] (7) Whenever the United States desires to construct any navigation facilities in connection with the project the licensee shall convey to the United States, free of cost such of its lands and its rights-of-way and such right of passage through its dam or other structures and permit such control of pools as may be required to complete such navigation facilities.

(8) The licensee shall furnish free of cost to the United States power for the operation of such navigation facilities when constructed.

(9) Installation of structures and operations designed to maintain the fishery value of the project, such as ladders, screens, and hatcheries, need not be made until the need for such devices has been determined

by the Fish and Wildlife Service. It will then be the obligation of the licensee to install them.

(10) Practical means of mitigating the losses to fish and wildlife resources occasioned by the construction and operation of the proposed project, of increasing the biological productivity of the project area, and of furthering its public use for recreational enjoyment should be developed by cooperative agreements between the licensee and the Idaho Fish and Game Department and the Fish and Wildlife Service.

(C) The license shall provide that after the first 20 years of operation of the project under the license six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings and for the establishment and maintenance of amortization reserves pursuant to Sec. 10(d) of the Act; one-half of all earnings in excess of six (6) percent per annum shall be paid into such amortization reserves, and such amortization reserves shall be established, maintained, and disposed of in accordance with the terms of the Act and such rules, regulations, and orders of the Commission as may be adopted pursuant thereto.

(D) Subject to the provisions of Sec. 10(e) of the Act and the rules and regulations of the Commission thereunder, the licensee shall, effective as of March 1, 1948, pay to the United States the following annual charges:

(1) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the authorized installed capacity (130,000 horsepower), plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated by the project during the calendar year for which the charge is made;

[fol. 93] (2) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands (exclusive of those used for transmission-line right-of-way), an amount to be hereafter determined; and

(3) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands used only for transmission-line right-of-way, $819.60.

(E) The exhibits specified in paragraph (10) above be and they are hereby approved as part of the license.

(F) The construction and operation of the transmission lines from the Bliss plant to substations near American Falls and Boise shall be subject to the following special conditions:

(1) The licensee shall not convert said lines to permit operation at a higher voltage without prior approval of the Commission. Upon the request of the Secretary of the Interior under appropriate authority, the licensee shall, after notice of at least one year from the Commission and within the time fixed by the Commission, convert said lines for operation at a voltage of 230 kv at the expense of the United States.

(2) After the initial construction of the lines or upon conversion of the lines to a higher voltage as herein provided, the licensee shall permit the United States, and the United States shall have the right to interconnect any of its transmission facilities with said lines in a manner conforming to approved standards of practice for the interconnection of transmission circuits provided there is capacity available in said line or lines in excess of the needs of the licensee. The expense of such interconnection, including the expense of additional switching, relaying, and other protective devices, shall be borne by the United States, provided, however, that no such interconnection may be made without the prior approval of the Commission.

(3) Upon completion of any such interconnections, the United States shall have the right to transfer energy over said lines as initially or ultimately constructed in such amounts as will not unreasonably interfere with the licensee's use of said lines provided that the licensee shall be obligated to allow the transmission over the said lines by the United States of electric energy only to consuming facilities of the United States and to public bodies and cooperatives entitled to statutory preference in connection with the distribution and sale of electric energy by the United States.

[fol. 94] (4) After any such interconnection of the facilities of the United States with said lines the licensee shall, except in emergencies, maintain in a closed position all connections under the licensee's control

between the licensee's lines and the interconnecting facilities provided by the United States.

(5) Any interconnected power systems of the United States and the licensee shall be operated in parallel and in such manner as to render good and adequate service. Any inadvertent flow of energy from the lines of the United States into said lines or from said lines into the lines of the United States which may occur while the lines of both the licensee and the United States are electrically interconnected shall mutually be compensated for by later return in kind. Any scheduled transfer of energy over said lines for the account of the United States shall be settled for or any investment in said lines made by the United States shall be liquidated, on reasonable terms under agreements which shall be negotiated between the licensee and the United States, said agreements to be subject to approval by the Commission.

(6) Until such agreements are completed, settlement for any such scheduled transfers of power shall be made on the following basis. If power and energy from the lines of the United States is transmitted over these lines, the monthly payment for such transmission shall be the amount of dollars representing that part of the monthly cost to the licensee of the section of the line or lines over which the power and energy is transmitted which the maximum transmission by the United States in kilowatts during the month bears to the kilowatt capacity of such section of line or lines. The monthly cost to the licensee referred to herein shall be computed in conformity with the uniform system of accounts prescribed by the Commission.

(7) In the event the licensee, its successors or assigns, during any period in which the United States is transmitting power over these lines, shall require reciprocal accommodations for the transfer of power from these project lines over any lines of the United States connected to said lines of the licensee, such reciprocal accommodations shall be accorded to the licensee under like terms and conditions as herein provided for the transfer of power from the lines of the United States over said lines of the licensee.

[fol. 95] (8) If, at any time subsequent to the date upon which the licensee commences the transmission of energy over said lines for the United States, the licensee notifies the Commission that the licensee needs for the transmission of electric energy in connection with its operations the whole or any substantial part of the capacity of the said lines, or part thereof, then being utilized by the United States, and the licensee makes satisfactory provision for reimbursement to the United States of the original cost to the United States of the facilities desired by the licensee, less accrued depreciation on the investment of the United States, the licensee may modify or revoke the then existing agreement to remain interconnected and to transmit energy for the United States by giving to the Commission 30 months' notice, of the licensee's intention to utilize additional capacity or the entire capacity of the lines, or part thereof, as the case may be, provided, however, that the United States may continue to utilize any capacity in the said lines to the extent that said capacity, if any, was provided by the United States at its expense without reimbursement by the licensee.

(9) If at any time in the future the said lines of the licensee are proposed for alteration or are altered, the Commission reserves the right, after 30 days' notice and opportunity for hearing, to make a determination as to whether the lines after such alteration, either proposed or actual, will be subject to licensing by the Federal Power Commission under the then existing laws and regulations, and in the event that the Commission finds that the said alteration in the lines, either proposed or actual, so changes the functions served by said lines and the source of energy transmitted over said lines as to make them, or any part of them, not subject to the licensing authority of the Commission under the then existing laws and regulations, the licensee hereby agrees to secure authority for the continued operation and maintenance of the lines, or such part of the lines, from the appropriate agency of the United States then having jurisdiction over the lands of the United States occupied by the lines, or part thereof, and upon securing said authority, the licensee hereby agrees to surrender the license insofar as it authorizes operation and maintenance of the lines, or such parts thereof, which are

found to be no longer subject to Commission jurisdiction. In the event that the licensee should fail to surrender the license insofar as it is applicable to the lines, or parts thereof, which may then be found by the Commission not to be subject to its jurisdiction, the Commission reserves the right to take appropriate action to have the license terminated with respect to said lines, or parts thereof, as provided in the then existing laws and regulations.

[fol. 96] (10) Any agreement between the licensee and the United States in connection with said transmission lines or related facilities shall be effective only upon approval by the Commission. In the event the licensee and any agent of the United States are unable to agree with respect to any matter arising in connection with said transmission lines or related facilities, the question thereby raised shall be submitted to the Commission for determination.

By the Commission.

LEON M. FUQUAY,
Secretary.

Date of Issuance: October 13, 1949

[fol. 97] BEFORE THE FEDERAL POWER COMMISSION

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Secretary
Washington 25, D. C.

Project No. 1975

Oct 13 1949

My dear Mr. Smith:

We are transmitting herewith the original and 19 copies of a formal complaint in the Matter of the Idaho Power Company, which we are filing in order to protect our procedural rights before the Commission, as well as the procedural rights of the Government in the case of *United States* v. *Idaho Power Company* (Civil Action No. 2691, United States District Court for the District of Idaho).

Pursuant to our conference of October 6 last, there have been discussions between your representatives and representatives of

this Department, but it appears that some substantial differences of view between the two groups have developed with respect to the conditions that should be inserted by the Commission in the license amendment applied for by the Idaho Power Company. We understand that your representatives will submit our propositions to the Commission. We request that our representatives be given an opportunity to confer with the Commission on these propositions if they appear unacceptable to the Commission on preliminary consideration.

Should it later appear that the interests of this Department will be fully safeguarded by whatever conclusions the Commission arrives at, we shall, of course, move that our complaint be dismissed.

Sincerely yours,

J. A. KRUG

Secretary of the Interior

Hon. Nelson L. Smith, Chairman
Federal Power Commission
Washington 25, D. C.

Enclosures 20

[fol. 98] BEFORE THE FEDERAL POWER COMMISSION

In the Matter of

IDAHO POWER COMPANY

Project No. 1975.

COMPLAINT—Received October 13, 1949

To the Honorable
The Federal Power Commission:

Comes now Julius A. Krug, Secretary of the Interior, complainant herein, and brings this complaint against the Idaho Power Company (hereinafter sometimes referred to as the "Company"), and states as follows:

1. The complainant is the Secretary of the Interior and the head of the Department of the Interior, one of the executive departments of the United States Government.

2. The Department of the Interior, through its Bureau of Land Management, has been and is in charge of, and exercises jurisdiction over, certain public lands involved in this proceeding.

3. The Secretary of the Interior has, for some time, been interested in, and concerned with, the supply of power in the southern part of the State of Idaho. The Federal Government has hydroelectric projects in the area, and other Federal hydroelectric projects are either under construction or have been authorized to be constructed. The Secretary of the Interior has been vested by [fol. 99] statute with the authority and responsibility respecting the marketing of the power generated at these projects. In April 1948, the Bureau of Reclamation and the Bonneville Power Administration, agencies of the Department of the Interior, made and submitted a joint report entitled "Report on Availability of Power in Southern Idaho for Development of Phosphate Industry," wherein they proposed that the United States construct, own, and operate a transmission line which would connect the eastern and western parts of the Southern Idaho region. This report was transmitted to the Idaho Power Company with a request for a conference to explore the possibility of cooperative arrangements in order to supply power for potential phosphate producers as soon as possible.

4. Before any substantial discussion took place, the Company, of June 9, 1948, applied to the Bureau of Land Management for an advance construction permit to construct a transmission line over certain public lands in advance of a formal application for a right-of-way pursuant to the Department's rules and regulations. On December 22, 1948, it filed an application for the grant of an easement for a right-of-way over said lands.

5. The proposed transmission line was to be a 230 KV line and was to extend over a distance of approximately 200 miles between Boise and American Falls, Idaho. The right-of-way desired by the Company over the said public lands would constitute more than half of the entire right-of-way required for said line. The total [fol. 100] cost of the line, including the 230 KV terminal facilities, was estimated at approximately $4,000,000. However, the Company proposed to operate this line initially at 138 KV and thus to defer installation of 230 KV terminal facilities.

6. The transmission line for which the Company sought a permit or easement from the Bureau of Land Management, whether regarded as one line from Boise to American Falls, or as two lines from Boise to Hagerman and from Hagerman to American Falls, was intended as a major trunk line, not as a project line.

7. After the filing of the application for a preconstruction permit, extensive negotiations followed, in which the representatives of the Secretary took the position that, if public lands of the United States were to be used by the Company for the construction of such an important part of the future power system of the region, the public interest required that the ownership and operation of this line by the Company should not interfere with, but should complement, the later development of Federally owned power generating and marketing facilities, and that there should be no wasteful duplication of transmission facilities. Since the Company had not shown a present need for a 230 KV line, the Secretary of the Interior proposed to grant a preconstruction permit and later an easement for the necessary right-of-way, subject, however, to the right of the Government to transmit its power over this line to the extent of the unused capacity of the line, upon [fol. 101] the payment of an equitable share of the operation and maintenance costs proportionate to the capacity used by the Government. Through all the negotiations with the representatives of the Secretary of the Interior, the Company resisted the condition sought to be imposed, namely, that the unused capacity of the line might be utilized by the Government for the transmission of its power upon payment of just compensation.

8. On April 11, 1949, the Company withdrew its application for a permit or easement, for the alleged reason (later stated by its representative in a letter to the Bureau of Land Management, dated May 27, 1949) that on March 2, 1948 the Federal Power Commission had issued a license for Project No. 1975, containing a provision, among others, that Commission reserved the right to determine at a later date what transmission facilities should be included in the license as part of the project.

9. On April 20, 1949, the Company filed an application with the Commission to amend its license for Project No. 1975 by including therein two 138 KV transmission lines, of which one would extend from the project to Boise, Idaho, a distance of some 73 miles, and the other would extend from the project to American Falls, Idaho, a distance of some 116 miles.

10. On April 26, 1949 the Company, by a letter to the Federal Power Commission, requested that it be granted pre-license permission to commence the construction of these transmission lines. On [fol. 102] May 2, 1949 the Commission advised the Company that pre-license construction of these lines at the Company's own risk, and "subject to the requirements of the agency or agencies having jurisdiction over the Government lands involved," would not prejudice the Commission's consideration of the appli-

cation filed on April 20, 1949, for inclusion of these lines in the project. The effect of this advice was that the Commission gave no permission to the Company to occupy the lands of the United States in order to construct these lines and that, before occupying any public lands of the United States with these lines, the Company was under a direct obligation to obtain the permission of the Department of the Interior, although, even then, the Company was to assume all the risk of the construction.

11. Notwithstanding the conditions set forth in the letter of the Commission dated May 2, 1949, the Company willfully, unlawfully, illegally, and without any permit from the Secretary of the Interior, or from anyone acting under his authority, entered and trespassed upon the said public lands, and commenced the construction of the said transmission lines thereon, all with the intent, purpose, and effect of evading the jurisdiction of the Secretary of the Interior over the said public lands. In doing so, the Company acted in violation of the advice given to it by the Commission, and in violation of the rules and regulations of the Department of the Interior and in contempt of both the Secretary of the Interior and the Federal Power Commission.

[fol. 103] 12. The two 138 KV lines covered by the Company's application for amendment of its license for Project No. 1975 constituted substantially the same line for which the Company had negotiated with the Department of the Interior in its application for a permit or easement for a right-of-way for its 230 KV line referred to in paragraphs 4 through 6 hereof.

The Secretary of the Interior further alleges that the application for amendment of the license for Project No. 1975 was not filed in good faith, but that the purpose of the said application was solely to invoke the regulatory jurisdiction of the Commission in order to oust the jurisdiction of the Secretary of the Interior, and to avoid the requirement of law that such transmission lines could be constructed on public lands only after obtaining a permit or easement from the Secretary of the Interior in accordance with the rules and regulations of the Department of the Interior.

13. The Secretary further alleges that the two 138 KV lines which are the subject of the Company's application are not project lines, in that

(a) The said lines are not "tap lines" which the Company sought to include in its application for a license for Project No. 1975, but are, and are intended to be, trunk lines which will serve as a part of the Company's interconnected transmission system, and

[fol. 104] (b) From the drawings submitted with the Company's application for amendment of the license, it appears that the two transmission lines are not intended to be and remain 138 KV lines, but are intended to be converted later for operation as 230 KV lines and that the capacity of such 230 KV lines will be far in excess of the capacity of the project (Bliss plant).

14. The Secretary of the Interior further states that if the said two 138 KV lines, without interconnections with the Company's transmission system except at Boise, Idaho, and American Falls, Idaho, were regarded as project lines, they would be unreliable in case of outages, would lack flexibility of operation, and would be economically unsound. On the other hand, if these two lines, or the project itself, were so interconnected with the Company's transmission system as to provide for reliable, flexible, and economical operation, the lines from the project to such points of interconnection (not the two 138 KV lines which are the subject of the present application) would constitute project lines.

WHEREFORE, the Secretary of the Interior respectfully requests that the application of the Idaho Power Company be dismissed or denied.

Respectfully submitted,

J. A. KRUG
Secretary of the Interior

MASTIN G. WHITE
Solicitor of the Department of the Interior

GREGORY HANKIN
Of Counsel

[fol. 105] BEFORE THE FEDERAL POWER COMMISSION

Washington, D. C.

In the Matter of

IDAHO POWER COMPANY

Project No. 1975

PETITION FOR REHEARING—Received November 10, 1949

Idaho Power Company (hereinafter referred to as Applicant) hereby applies, pursuant to the provisions of Section 313(a) of the Federal Power Act (hereinafter referred to as the Act), and Section 1.34 of the Commission's Rules of Practice and Procedure, for a rehearing on the Commission's "Order Superseding Order Authorizing Issuance of License (Major)," dated and issued October 13, 1949, in the above entitled proceeding, upon the grounds hereinafter set forth:

The Commission erred in inserting and imposing upon Applicant in said Order the conditions contained in Paragraph F, subparagraphs 1-10 inclusive, and in requiring that the construction and operation of the transmission lines from the Bliss plant to substations near American Falls and Boise shall be subject to said conditions. Applicant respectfully alleges that said conditions and requirements are illegal and invalid, and beyond the jurisdiction, power or authority of the Commission to impose, for the following reasons:

A. Said conditions and requirements constitute administrative legislation, contrary to the Constitution (Article I, Section 1) and laws of the United States.

B. Said conditions and requirements are in violation of rights guaranteed under the Fifth Amendment to the Constitution of the United States, in that said regulations would deprive Applicant of its property without due process of law, and take the property of Applicant for public use without just compensation.

C. The conditions and requirements of Paragraph F(9) would subject Applicant, and its property, to *ex post facto* laws and regulations, in violation of Sections 6 and 28 of the Act, and contrary to the Constitution (Article I, Section 9) of the United States; and to the revocation, alteration or sur-

render of said license, with respect to said transmission lines, in violation of Section 6 of the Act.

[fol. 106] D. Said conditions and requirements are not authorized under either Section 4(e) or 10(g), or under any other provision of said Act, or of any other law, in that, among other things, said conditions and requirements are not related to or necessary for "the adequate protection and utilization of such reservation," if any, as may be involved in the licensing of said transmission lines, and are "inconsistent with the provisions" of said Act.

E. Said conditions and requirements, and the imposition and inclusion thereof in said Order of October 13, 1949, are not in accordance with law in that the same are not authorized by any statute, or supported or justified by any evidence, or by any relevant finding or reason therefor contained in said Order or otherwise.

F. Said conditions and requirements are unreasonable and arbitrary, and constitute abuse of discretion, for the reasons set out in D and E hereof, and also, among other things, in the following respects:

(a) Paragraph F(1), in the requirement that Applicant, upon request of the Secretary of the Interior, shall convert Applicant's said lines for operation at a voltage of 230 kv.

(b) Paragraph F(3), in that said requirements and conditions would compel Applicant to permit the use of its own facilities, and would permit the United States to use Applicant's facilities, in competition with Applicant, and in a manner and under conditions which constitute an unreasonable and unlawful discrimination against Applicant and Applicant's customers.

(c) Paragraph F(6), in that no interconnections, transfers of power, or settlements therefor, should be required of Applicant, or permitted, until and after the negotiation and execution of agreements therefor, setting forth specifically the terms and conditions with respect thereto, as provided for in Paragraph F(5) of said Order, prior to the making of any interconnection with the lines and facilities of Applicant.

[fol. 107] Paragraph F(8), in that the requirement of 30 months notice for withdrawal of capacity is grossly

and unreasonably excessive, especially where the line and facilities involved are provided solely by Applicant, and at Applicant's investment and expense, for supplying the service needs and electrical demands of Applicant's customers and the public. Need for such withdrawal of transmission capacity will arise because of immediate or pending customer demand upon the transmission lines here involved. Delay of 2½ years would, in fact, prevent Applicant from providing adequate facilities and service to the public, as required of Applicant, as a public utility, by and under the laws of the States of Idaho, Oregon and Nevada, in which Applicant serves, and, moreover, in consequence and as a direct result of a limitation imposed by the Commission itself; and said requirement is also inconsistent and in conflict with the requirements, purposes and provisions of Section 207 of the Act. Said 30-months requirement is therefore against the public interest and welfare, and inconsistent with the main purposes of the Bliss license and the Act. Said 30 months requirement would also prevent the Company from meeting such service requirements and conditions as would necessitate the future installation and utilization of a fourth generating unit in said project, as provided for in paragraph B(2) of said Order.

(e) Said conditions and requirements are arbitrary and unreasonable, in that the same are so indefinite and uncertain that neither the Commission, the United States, nor the Applicant is or can be advised as to rights and liabilities which may arise thereunder, with reference particularly to (1) the making of interconnections by the United States to and with said lines of Applicant (F(2) of Order), and the operating responsibilities and liabilities arising out of such interconnections, and the sub- [fol. 108] sequent operation of said lines; (2) the meaning of "capacity available in said line or lines in excess of the needs of the licensee" (F(2) of Order); (3) what shall constitute "unreasonable" interference with the licensee's use of said lines (F(3) of Order); and (4) conditions with respect to supplying of service to the respective customers of the United States and the licensee in times of insufficient capacity, generation or transmission outages, or other emergency conditions.

WHEREFORE, Applicant respectfully requests that the Commission grant a rehearing in respect of its said Order of October 13,

1949, and that paragraph F, in its entirety, be abrogated and deleted therefrom.

Respectfully submitted,

IDAHO POWER COMPANY

BY A. C. INMAN

Vice-President

A. C. INMAN

Address: 1220 Idaho Street
Boise, Idaho

Attorney for Idaho Power Company

Duly sworn to by A. C. Inman jurat omitted in printing.

[fol. 109] BEFORE THE FEDERAL POWER COMMISSION
UNITED STATES

DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington 25, D. C.

Nov 17 1949

Dear Mr. Smith:

I wish to express the appreciation of this Department for the opportunity we had to discuss the Idaho Power Company matter with your Commission and your staff. After careful study of the Commission's order of October 13, granting the Company's application to include the two 138 KV transmission lines in Project No. 1975 upon the conditions therein contained, we feel that a great forward step has been taken in the protection of the Government's interests.

The principle that transmission facilities constructed over Government lands should be made available, to the extent of their unused capacity, to the United States upon reasonable terms is important both to the utilities and to the United States. It is important to the utilities, because it means that transmission capacity will not be wasted and that there will be a more economical use of transmission facilities in the public interest. It is important to the United States, because it means avoidance of wasteful duplication of facilities, and therefore, more economical development and

utilization of the vast potential hydroelectric resources in the Western States.

As you know, the Idaho Power Company made every effort to escape substantially the same requirements of this Department covering the use of public lands for the construction of transmission lines. It is, therefore, most gratifying that the Commission moved so promptly in applying the principle of uniformity of governmental purpose, by making it impossible here for this or any other company to submit to the jurisdiction of one agency of Government as an escape or protection from another. We construe section (F) of the order to mean that none of its provisions would operate automatically in favor of the Company, or as enabling it to employ tactics to defeat or delay the use of the facilities by the United States. Unless this is the meaning and effect of this section, the supervision retained by the Commission to effectuate this order may be employed to defeat its purposes, and businesslike arrangements between the Government and the Company may be avoided through costly and expensive proceedings before the Commission.

In some respects, the order does not in plain words give the full assurance we should like to have, that the transmission facilities involved would fit into the future power system of the region. Our [fol. 110] regulations contemplate that such transmission lines would not interfere with the Government's program for marketing power from its projects. We are confident that the order has a similar objective. With this in mind, we construe paragraphs (8) and (10) of section (F) to mean that the thirty months' notice (required in paragraph (8)) is for the purpose of giving the Commission time to investigate and determine (under paragraph (10)) the Company's need of the transmission capacity then used by the Government, and that such notice does not operate automatically to preclude further use of the lines by the United States, if, in fact, there is capacity available, or that could be made available, for use by the Government. Unless this construction is correct, there would be serious doubt as to whether the United States would in any circumstances be justified in investing in substations and other facilities needed to utilize these lines.

It would appear from paragraph (3) of section (F) that the order imposes a greater limitation on the use which the Government might make of the transmission facilities than there would be under the regulations of this Department. This may create some obstacles to the full employment of the power resources of the region in the development of the vast phosphate deposits to provide cheap fertilizer for western lands. We are confident that, if issues of this kind develop, we shall have the full cooperation of the Commission in meeting them.

It is my understanding, on the basis of my personal conversation with counsel for the Commission, Mr. Willard W. Gatchell, that, unless precluded by the Courts, the Commission will require the Company to accept the terms of the license and the obligations to the United States thereunder. We assume that, if the Commission is precluded from requiring any conditions of the order, the lands involved will be returned to the jurisdiction of this Department so that the terms of our regulations may be put into effect. It is with this understanding, and with our appreciation for the careful consideration given by the Commission to the interests of this Department and of the public, that I am advising you of this Department's full cooperation in rendering the Commission's order most effective to the end that the public interest will be protected.

Sincerely yours,

J. A. KRUG

Secretary of the Interior

Hon. Nelson Lee Smith, Chairman

Federal Power Commission

[fol. 111]

Project No. 1975

Nov 28, 1949

Honorable J. A. Krug
Secretary of the Interior
Washington, D. C.

Dear Secretary Krug:

Thank you for your letter of November 17 with respect to the license conditions prescribed in the Commission's order of last month for construction and operation of two transmission lines leading from the Bliss plant of the Idaho Power Company, Project No. 1975.

You are correct in understanding that the Commission, unless precluded by the courts, intends to require the company to accept the terms of the license, although if the Commission is found to be without jurisdiction, the lands will be returned to the Department of the Interior.

Sincerely yours,

CLAUDE L. DRAPER
Acting Chairman

Law
WWG:prf
11-21-49

FACSIMILE

Project No. 1975

NOV 28 1949

Honorable J. A. Krug
Secretary of the Interior
Washington, D. C.

Dear Secretary Krug:

Thank you for your letter of November 17 with respect to the license conditions prescribed in the Commission's order of last month for construction and operation of two transmission lines leading from the Bliss plant of the Idaho Power Company, Project No. 1975.

You are correct in understanding that the Commission, unless precluded by the courts, intends to require the company to accept the terms of the license, although if the Commission is found to be without jurisdiction, the lands will be returned to the Department of the Interior.

Sincerely yours,

Claude L. Draper
Acting Chairman

SIGNED ORIGINAL MAILED
F.P.C. MAIL

[fol. 112] BEFORE THE FEDERAL POWER COMMISSION

Washington, D. C.

In the Matter of

IDAHO POWER COMPANY

Project No. 1975

MODIFICATION OF PETITION FOR REHEARING—NOVEMBER 30, 1949

Idaho Power Company hereby respectfully modifies its Petition for Rehearing, filed with the Commission on November 10, 1949, in the above-entitled proceeding, by deleting therefrom, following the word "statute" in paragraph E thereof, the words "or supported or justified by any evidence, or by any relevant finding or reason therefor contained in said Order or otherwise."

Respectfully submitted,

IDAHO POWER COMPANY

By A. C. INMAN

Vice President

A. C. INMAN

Address: 1220 Idaho Street
Boise, Idaho
Attorney for Idaho Power Company

Duly Sworn to by A. C. Inman

[fol. 113] BEFORE THE FEDERAL POWER COMMISSION

Before Commissioners: Nelson Lee Smith, Chairman; Thomas C. Buchanan and Claude L. Draper.

In the Matter of

IDAHO POWER COMPANY

Project No. 1957

ORDER EXTENDING TIME FOR ACTION UPON PETITION FOR REHEARING—DECEMBER 13, 1949

The Idaho Power Company on November 10, 1949, filed a petition for rehearing on the Commission's order of October 13, 1949, authorizing inclusion of certain transmission facilities as parts of

the project works and superseding authority previously granted for construction of the Bliss project on the Snake River in Idaho, Project No. 1975.

In addition to its formal presentation, the company has made certain informal presentations and the Secretary of the Interior has filed a formal complaint urging dismissal of the application for license, a formal statement in opposition to the rehearing requested, and informal letters commenting upon and seeking modification of certain provisions of the order of October 13, 1949.

The Commission *finds:*

Further consideration is desirable of the questions raised in connection with said order of October 13, 1949.

The Commission *orders:*

Further action on the petition for rehearing and the informal presentations is hereby postponed for a period not to exceed 30 days from date of issuance of this order.

By the Commission.

LEON M. FUQUAY,
Secretary.

Date of Issuance: December 14, 1949

[fol. 114] BEFORE THE FEDERAL POWER COMMISSION

Before Commissioners: Nelson Lee Smith, Chairman; Thomas C. Buchanan, Claude L. Draper, Mon C. Wallgren and Harrington Wimberly.

In the Matter of

IDAHO POWER COMPANY

Project No. 1975

ORDER MODIFYING ORDER OF OCTOBER 13, 1949 AUTHORIZING ISSUANCE OF LICENSE (MAJOR)

January 18, 1950

Having nearly completed the construction of its Bliss plant on the Snake River in Idaho, licensed as Project No. 1975, the Idaho Power Company, licensee, applied for inclusion among the project facilities of two transmission lines leading from that plant to Boise and American Falls. Inclusion of the lines as part of the project facilities was authorized by the Commission's order of October 13,

1949, which superseded authority previously granted for the development.

A formal petition for rehearing on the order of October 13, 1949, was filed by the applicant on November 10, 1949, and modified on November 30, 1949, by striking specified language in the petition. In addition, the applicant filed an informal letter requesting modification of certain provisions in the order. Both the formal petition and letter have been considered. The Secretary of the Interior also filed an informal letter commenting upon the order, a formal complaint urging dismissal of the application for license, and a formal statement in opposition to the rehearing requested by the company, and his comments both formal and informal have been considered. While no formal hearing has been held on the application for either the Bliss plant or the transmission lines, the company does not request that it be given a formal hearing aside from consideration of the modifications which it suggests in particular paragraphs of the order.

Under paragraph F (8) of the order of October 13, 1949, the licensee can repossess transmission line capacity after notice of thirty months. The licensee suggests that, in the event it was informed that some customer desired additional capacity within a shorter period, the thirty months' notice requirement might interfere with use of its facilities to serve its own customers in accordance with its public utility obligations. The Secretary suggests that the termination notice is for the purpose of giving the Commission time within which to investigate and determine the requirements of the licensee, but that it should not operate automatically to preclude further use by the United States of spare capacity on the lines. He also calls attention to the substantial investment which the United States must make in order to use spare capacity on these lines and asks that this investment not be jeopardized.

[fol. 115] Since this termination notice will not operate automatically so as to preclude further use by the United States of spare capacity on these transmission lines, and any investigation and decision by the Commission may be completed in a much shorter period than thirty months, a termination notice of twenty-four months would be sufficient. This shorter period should also provide sufficient time within which the United States could construct substitute capacity for lines which the licensee has built in less than eight months.

Paragraph B (9) of the order of October 13, 1949, does not make it clear that upon the order of the Commission and after its determination in the case of dispute between the licensee and the Fish and Wildlife Service, the licensee shall construct appropriate facilities

for the protection of fish life. That paragraph should be amended accordingly.

The Secretary of the Interior also filed an informal request for inclusion of a license condition that the transmission facilities authorized should not interfere with the reclamation projects, but that if necessary the licensee should move or adapt obstructing facilities at its own expense. The standard license conditions imposed upon projects crossing lands of the United States provide for reasonable use by Federal agencies of such lands as are within the project boundary, but do not require the licensee to bear the expense of relocating obstructing facilities.

The Commission *finds:*

(1) Amendment of paragraphs B (9), F (7), and F (8) of the order of October 13, 1949, as hereinafter provided, is appropriate and in the public interest, but further amendment of that order is not desirable at this time.

(2) The petition of the applicant for rehearing, referred to, as modified, should be denied.

(3) The request of the Secretary of the Interior for modification of the order of October 13, 1949, for the further protection of the reclamation projects should be denied.

(4) The formal complaint filed October 13, 1949, by the Secretary of the Interior should be dismissed.

The Commission *orders:*

(A) Paragraph B (9) of the order of October 13, 1949, herein is modified to read as follows:

"(9) Installation of structures and operations designated to maintain the fishery value of the projects, such as ladders, screens, and hatcheries, need not be made until the need for such devices has been determined by the Commission upon the recommendation of the Fish and Wildlife Service and an appropriate order therefor has been issued by the Commission."

[fol. 116] (B) Paragraph F (7) of the order of October 13, 1949, herein is hereby modified to read as follows:

"(7) In the event the licensee, its successors or assigns, during any period in which the United States is transmitting power over these lines, shall require reciprocal accommodations for the transfer of power from these project lines over any lines of the United States connected to said lines of the licensee, such reciprocal

accommodations shall be accorded to the licensee under like terms and conditions as herein provided for the transfer of power from the lines of the United States over said lines of the licensee, and the requirements of, and the obligations of the licensee under, the provisions of paragraph F herein contained shall be contingent and conditioned upon such reciprocal rights being accorded to licensee, subject to the conditions contained in paragraph F hereof, by any agency of the United States then utilizing the facilities of these lines under the terms of the license.

(C) Paragraph F (8) of the order of October 13, 1949, herein is hereby amended by changing the period of notice required before the licensee may repossess line capacity in use by the United States from thirty months to twenty-four months.

(D) The petition for rehearing filed by the applicant on November 10, 1949, as modified on November 30, 1949, is hereby denied.

(E) The request of the Secretary of the Interior for modification of the standard license provision for the protection of reclamation facilities of the United States is hereby denied.

(F) The complaint filed by the Secretary of the Interior on October 13, 1949, is hereby dismissed.

By the Commission. Commissioner Wallgren not participating.

LEON M. FUQUAY,
Secretary

Date of Issuance: January 18, 1950

[fol. 117]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. —

FEDERAL POWER COMMISSION, PETITIONER

vs.

IDAHO POWER CO.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner.

It is ordered that the time for filing petition for writ of certiorari

in the above-entitled cause be, and the same is hereby, extended to and including October 6th, 1951.

FRED M. VINSON,
Chief Justice of the United States.

Dated this 2nd day of August, 1951.

[fol. 118]

Supreme Court of the United States

No. 483, October Term, 1951

(Title Omitted)

Order allowing certiorari. Filed March 3, 1952.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton took no part in the consideration or decision of this application.

[fol. 119]

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 483

STIPULATION AS TO PRINTING OF RECORD—FILED JULY 17, 1952

Subject to this Court's approval, it is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that:

For the purpose of hearing and determining the case on the merits, the printed record shall consist of the following:

	Page of original transcript
1. Petition for Review (joint appendix pp. 1-7)	
2. Certificate of Transcript of Record (before Federal Power Commission) (unnumbered in original transcript)	
3. Judgment of United States Court of Appeals for the District of Columbia, dated May 10, 1951, striking paragraph (F) from order of Federal Power Commission	
4. Application for License	3–8
5. Letter, dated September 16, 1947, from J. H. Gutride to Honorable C. A. Robbins	30
[fol. 120]	
6. Identical letters to others	31
7. Notice of Application for Major License	32
8. Amendments to Application for License	36–38
Exhibit J (amended)	50 and 56
Exhibit N (amended)	54
9. Letter, dated December 22, 1947, from FPC to the Secretary of Interior, transmitting application for license and exhibits for report under Section 4(e) and 18 of the Federal Power Act and the provisions of Public Law 732, 79th Congress, 2nd Session, approved August 14, 1946 (entire letter)	69–70

	Page of original transcript
10. Notice of Amended Application for Major License	75
11. Exhibit F (Revised)	82
12. Report, by letter dated February 19, 1948, of the Secretary of Interior, filed February 20, 1948	83–84
13. Order authorizing issuance of license, entered March 2, 1948, and issued March 3, 1948	87–91
14. Letter, dated March 18, 1948, from Leon M. Fuquay to Director, Bureau of Land Management, Department of the Interior	98
15. Application for supplementary amendments to application for license requesting authority to construct, operate and maintain two transmission lines as part of the project, together with exhibits, filed April 20, 1949	110–112
Exhibit J-1	118
Exhibit J-2	119–120
Exhibit M: General Description and Specifications of Equipment	116
Exhibit N: Estimate of Project Cost	117
16. Letter, dated May 2, 1949, from Leon M. Fuquay to Idaho Power Company	143
17. Letter, dated July 29, 1949, from the FPC to the Secretary of the Interior, forwarding application filed April 20, 1949, as amended, and requesting a report pursuant to Section 4(e) of the Federal Power Act	164–165
18. Letter, dated August 10, 1949, from Honorable J. A. Krug, Secretary of the Interior, to Honorable Nelson Lee Smith (entire letter)	166–170
[fol. 121]	
19. Letter, dated August 16, 1949, from FPC to Idaho Power Company, transmitting copy of the report of the Secretary of Interior last above	171
20. Letter, dated August 24, 1949, from J. H. Gutride, Acting Secretary to Director, Bureau of Land Management, Department of Interior	174–178

	Page of original transcript
21. Letter, dated September 9, 1949, from A. C. Inman to Federal Power Commission (entire letter)	179-185
22. Letter, dated September 28, 1949, from FPC to the Secretary of Interior, requesting that conditions relating to transmission lines be submitted by October 3, 1949	215
23. Letter, dated October 4, 1949, from Honorable J. A. Krug, Secretary of the Interior, to Honorable Nelson L. Smith (entire letter)	216–217
24. Letter, dated Oct. 5, 1949, from FPC to Idaho Power Company, transmitting a copy of the report by the Secretary of Interior	221
25. Letter, dated October 5, 1949, from Idaho Power Company, commenting on report of Secretary of Interior, filed October 6, 1949	222–224
26. Order superseding order dated March 2, 1948, authorizing issuance of license, entered and issued October 13, 1949	225–235
27. Letter, dated October 13, 1949, from Honorable J. A. Krug, Secretary of Interior, to Honorable Nelson L. Smith	236
28. Complaint of Department of Interior	237–243
29. Applicant's petition for rehearing, filed November 10, 1949	247–250
30. Letter, dated November 17, 1949, by the Secretary of Interior, relating to provisions of order issued October 13, 1949 (entire letter)	258–259
31. Letter, dated November 28, 1949, from Claude L. Draper, Acting Chairman, to Honorable J. A. Krug, Secretary of Interior	260
[fol. 122]	
32. Modification of petition for rehearing by Idaho Power Company, filed November 30, 1949	261
33. Order extending time for action upon petition for rehearing, entered December 13, 1949, and issued December 14, 1949	273
34. Order modifying order of October 13, 1949, authorizing issuance of license, entered and issued January 18, 1950	275–277

It is further stipulated and agreed that counsel may refer in their briefs and argument to the record on file in this Court, including any part thereof which has not been printed.

It is further agreed that counsel for Respondent in signing this stipulation in no way waives or forfeits its right to discuss or object to the competency, weight or relevance of certain documents and papers which will be printed pursuant to this stipulation.

PHILIP B. PERLMAN
Solicitor General
Counsel for Petitioner

HARRY A. POTH, JR.
Counsel for Respondent

July 17, 1952

U.S. Government Printing Office 1952 218801